0000053169

RECEIVED

2002 MAY 13 P 3: 13

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR APPROVAL OF LOCAL SERVICE FREEZE TARIFF	Docket No. T-01051B-02-0073

NOTICE OF FILING
DIRECT TESTIMONY

Cox Arizona Telcom, L.L.C. hereby files the attached Direct Testimony of Douglas Garrett.

DATED: May 13, 2002.

COX ARIZONA TELCOM, L.L.C.

By [signature]
Michael W. Patten
ROSHKA HEYMAN & DEWULF, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
(602) 256-6100

ORIGINAL and **10 COPIES** of the foregoing filed May 13, 2002, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED
MAY 13 2002

DOCKETED BY	

ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

COPIES of the foregoing hand-delivered
May 13, 2002, to:

Jane L. Rodda, Esq.
ALJ, Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Christopher C. Kempley, Esq.
Maureen A. Scott, Esq.
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing mailed May 13, 2002, to:

Timothy Berg, Esq.
FENNEMORE CRAIG, PC
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Teresa Tan, Esq.
WORLDCOM, INC.
201 Spear Street 9th Floor
Dept. 9976
San Francisco, California 94105

Brian Thomas
TIME WARNER TELECOM, INC.
520 SW 6th Avenue, Suite 300
Portland, Oregon 97204

Thomas H. Campbell, Esq.
Michael T. Hallam, Esq.
LEWIS AND ROCA
40 North Central Avenue
Phoenix, Arizona 85004
Counsel for WorldCom, Inc. and Time Warner Telecom

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, Colorado 80202

ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR APPROVAL OF LOCAL SERVICE FREEZE TARIFF	Docket No. T-01051B-02-0073

DIRECT TESTIMONY

OF

DOUGLAS GARRETT

ON BEHALF OF

COX ARIZONA TELCOM, L.L.C.

MAY 13, 2002

1. INTRODUCTION

Q. WHAT IS YOUR NAME AND WHAT IS YOUR BUSINESS ADDRESS?

A. My name is Douglas Garrett, 2200 Powell Street, Suite 1035, Emeryville, CA 94608.

Q. BY WHO ARE YOU EMPLOYED AND IN WHAT POSITION?

A. I am employed by Cox Communications, Inc. as Vice President of Regulatory Affairs for the Western Region of Cox's telephony operations. I am responsible for regulatory issues that affect Cox Arizona Telcom, LLC ("Cox").

2. QUALIFICATIONS OF WITNESS

Q. WHAT IS YOUR BACKGROUND AND EXPERIENCE?

A. I have been employed in my current capacity by Cox since August 2001. Prior to that I was employed by NorthPoint Communications as Vice President Service Provisioning and Vice President Local Exchange Carrier Relations. My responsibilities included managing all operational and customer service issues related to the company's broadband provisioning. I was also responsible for managing interconnection agreements with incumbent telephone companies, including the provisioning of central office collocation and unbundled network element. Previous to NorthPoint, I served as Vice President, State Regulatory Affairs for ICG Communications, a facilities-based CLEC based in Denver, Colorado. From 1973 to 1998, I was employed by Pacific Bell and SBC Communications in a variety of capacities, including network operations, marketing, and financial management. I was Executive Director, Local Inter-connection for Pacific Bell at the time the company negotiated and implemented its first round of interconnection agreements under the Telecommunications Act of

1996. I have a Bachelor's degree in Management from St. Mary's College of California.

3. PURPOSE OF TESTIMONY

Q. MR. GARRETT, WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony is intended to provide Cox's perspective on the potential implementation of Qwest's proposed preferred carrier freeze for local service and to urge the Commission not to approve the proposed tariff at this time.

4. SUMMARY OF TESTIMONY

Q. MR. GARRETT, WOULD YOU SUMMARIZE YOUR TESTIMONY?

A. In its January 28, 2002 tariff filing, Qwest asked this Commission to approve its proposed tariff to offer preferred local carrier service freeze ("LSF") to customers in the state of Arizona. Ostensibly, the LSF tariff is intended to protect customers against local service "slamming" by Qwest's competitors. The proposed tariff requires a customer with the service freeze to contact Qwest "directly" to lift the freeze before the customer can change from Qwest to another local service provider, thus forcing a Qwest customer to contact both Qwest and a competitive local exchange carrier ("CLEC") in order to switch service providers from Qwest to that CLEC. Without the tariff, the customer only needs to make one phone call to the CLEC to switch local service from Qwest. By forcing customers to call Qwest "directly" before they can switch to a CLEC, Qwest will be able subject the customer to "win-back" scripts or other potential strong-arm efforts to keep that customer with Qwest. This additional phone call is particularly troublesome in Arizona, where Qwest has a "Win-Back" tariff that allows Qwest to offer incentives (including discounts) to customers in order to win them back from CLECs. The call to Qwest to lift the freeze is a perfect opportunity for Qwest to pressure the customer not to switch to the CLEC.

Qwest filed this LSF tariff despite the fact that: (i) Qwest faces little local exchange service competition in the state of Arizona – particularly in the residential market – and retains the vast majority of its market share for both business and residential service and (ii) local slamming is not a problem in Arizona – indeed, Qwest could only identify one example of local slamming since January of 2000.

Cox strongly believes that Qwest's actions are anti-competitive at best and monopolistic at worst. Although Qwest had made concessions in its efforts to obtain the Commission's approval of its Section 271 application, this potentially onerous requirement for switching local carriers speaks volumes about Qwest's true intentions towards competitors. When one considers the recent problems some ILECs have had responding to customers in a timely manner, not to mention massive recently-announced layoffs at Qwest, it makes the problem even more acute: Imagine waiting on hold for an hour or more to try to remove a freeze on your local service in order to switch carriers. The marketing materials prepared by Qwest to mail to its customers to "inform" them of the availability of the local service freeze were prepared using what I would characterize as scare tactics; the mailers urged Qwest customers to "PROTECT YOUR LOCAL (DIAL TONE) PHONE SERVICE," by analogizing the slamming problems experienced in the long distance market.

Basically, what Qwest is doing is protecting its local exchange service market share by making it harder for customers to leave. The added step of calling Qwest is sometimes all it takes to prevent a customer from switching carriers and is perhaps the main reason that the FCC has recognized that preferred carrier freezes have the potential to be implemented in an anticompetitive manner.[1] The

[1] FCC 98-334, Paragraph 115.

FCC has discussed the issue, primarily in FCC 98-334, and clearly gives states the ability to adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes.[2]

Cox believes that the Commission should reject Qwest's proposed LSF tariff, in light of the dearth of competition (particularly residential competition) and the lack of local service slamming. If such a tariff is implemented, its primary impact will be to improperly interfere with the potential flow of customers to Qwest's competitors, not to protect Arizona consumers against a serious problem with local slamming.

5. Background

Q. COULD YOU DESCRIBE THE EVENTS THAT LED TO THE FILING OF THE LSF TARIFF?

A. The filing of the LSF tariff was the culmination of a series of activities related to Qwest's initial decision to unilaterally implement a local service freeze. On December 18, 2001, Qwest issued an email announcement stating that, effective January 17, 2002, Qwest will offer a new telecommunications product/service that would allow Qwest's local service customers to place local carrier freezes on their accounts. On December 28, 2001, Cox sent a letter to Qwest raising several concerns and questions about the freeze and requesting that Qwest either cancel the freeze service or file a proposed tariff with this Commission. On January 7, 2002, Qwest responded to Cox's letter contending that the local service freeze responds to "customer needs and state regulatory concerns," but without asserting that local service slamming was occurring in Arizona or attempting to quantify any potential problem. In light of Qwest's intent to unilaterally implement the freeze, Cox filed an application requesting that the Arizona Corporation Commis-

[2] FCC 98-334, CC Docket No. 94-129, Paragraph 137.

sion issue an order to show cause to Qwest to stay implementation of Qwest's proposed local carrier freeze service. In response to the Application, Qwest stated that it would file the LSF tariff and that an Order to Show Cause hearing was not necessary.

On January 28, 2002, Qwest filed a tariff proposing to offer a new telecommunications product/service in Arizona that would allow Qwest's local service customers to place local carrier freezes on their accounts. According to the proposed tariff, if a Qwest customer has "Local Service Freeze," Qwest will require that customer to contact Qwest "directly" before the customer can change local service from Qwest to a CLEC. Presently, a Qwest customer only needs to make one phone call to the CLEC to switch service from Qwest to that CLEC.

Q. HOW IS A LOCAL SERVICE FREEZE DIFFERENT FROM A PIC FREEZE REGARDING LONG DISTANCE SERVICE?

A. There are material differences between PIC/LPIC freezes regarding toll service and a local carrier freeze. First, there has been a nationwide problem with slamming with respect to long distance ("LD") carriers that has justified a need for PIC/LPIC freeze services. Second, the LD market is a fully developed and competitive market, unlike the local exchange market. Third, for LD, Qwest as the dominant LEC, primarily facilitates the reprogramming of its switch to accommodate LD carriers and its customers. Fourth and most importantly, Qwest has no (current) interest in most LD changes, and has no interest in any PIC changes within its incumbent LEC territories. However, for local exchange carrier changes, Qwest faces a major conflict of interest because almost every change of local service provider involves a customer that is leaving Qwest. Facilitating such switches is not in Qwest's economic or competitive interest. Due to this conflict and the potential for anticompetitive mischief, at a minimum there needs to be a tariff and/or rules and guidelines to eliminate such issues.

Moreover, independent verification of changes in long distance, or interexchange carriers (IXCs), is a very different thing than independent verification of changes in local providers. A person can change IXC dozens of times a year without ever having to have an IXC representative make physical changes in the wiring at their home. The changes are all done by computers, so "slamming," or unauthorized changes in a person's IXC, can occur more easily. Carrier freezes make more sense in that environment.

Local service by full facilities-based providers like Cox, on the other hand, requires a company technician to set an appointment to meet the subscriber and then requires physical modification of the system and wiring at the subscriber's home by the CLEC's technician. Slamming in local service almost never occurs.

It is also unlikely that resellers of local exchange service pose any significant threat of local service slamming. As set forth below, there has been almost no residential local service competition in Arizona in the past few years even though there are many local exchange resellers certificated to provide service in Arizona. The wholesale discount rates that have been in place since 1998 (12% for residential service and 18% for all other services) will continue into the future, as provided by stipulation in Qwest's pending UNE Pricing docket. Thus, there is no expectation that resale local exchange competition will increase dramatically in the future.

Q. DO YOU BELIEVE THAT LOCAL SERVICE SLAMMING IS OCCURRING IN ARIZONA?

A. No. In fact, Qwest has effectively acknowledged that there is no significant local slamming in its response to Cox's Data Request 1-2 (a copy of the response is attached as *Exhibit A*). Qwest identified only one specific example of local service slamming in Arizona since January 1, 2001. This lack of local slamming confirms the difficulty of such slamming. No state has experienced a significant problem with local service slamming to date, and there is no indication that such a problem is going to develop.

This lack of slamming reflects both the difficulty of local slamming by full facilities based providers and the lack of economic incentive for resale slamming when the available discounts have kept most authorized providers from entering Arizona's residential markets.

6. Operation of LSF Tariff

Q. PLEASE DESCRIBE COX'S CONCERNS ABOUT THE OPERATION OF THE LSF TARIFF.

A. The LSF tariff filing is particularly unenlightening about the actual operation of the tariff. Qwest has provided only limited information about the operational implications on co-carriers. Attached as *Exhibit B* is Qwest's current Wholesale Business Procedures for the Local Service Freeze.

The LSF adds a critical step to the customer transfer process. If a customer has LSF, the pre-ordering and ordering processes, including LNP, for all customer transfers must take into account the potential additional step of having the LSF lifted. It is a single step that could jeopardize the transfer if not handled properly by Qwest.

There are several operational issues that may require specific commitments from Qwest on procedures and timing. For example, Cox believes that the present system will significantly interfere with Cox's ability to efficiently transfer customers to Cox from Qwest. For example, each and every Cox Customer Service Representative does not have direct access to a Qwest customer's account information to determine if that customer has an LSF. That would require access through Qwest's IMA and specialized training for every CSR. If a Cox CSR cannot effectively – and promptly – tell whether a potential customer has an LSF on its account, the order for a port may fail and require the Cox CSR to contact the customer again to lift the freeze. Such a situation creates an impression that Cox is not as competent as it should be and may result in the customer deciding to forego switching to Cox.

Second, it appears that a Qwest customer must call their "Qwest Business Office" as the first step in removing the freeze. The customer will then be transferred to the "Qwest Freeze Removal Group" where the freeze will actually be removed. This presents two opportunities to be put on hold or be otherwise delayed. It also provides Qwest's Business Office an initial opportunity to market to or winback the customer as soon as they hear the customer wants to lift the freeze. Qwest will provide the customer an eight-digit "Record order number." That number must be included in any LSR submitted by the CLEC, thus requiring the customer to accurately remember and communicate the number to the CLEC.

Third, if a customer calls Qwest to remove the freeze, it is unclear exactly when the freeze will be lifted. Although Qwest claims the Record order will provide "due today", it does not explain the timing of the actual lifting of the freeze. It does not appear that it will be instantaneously lifted contemporaneously with the call to lift the freeze. Indeed, Qwest acknowledges it may take at least a day to lift the freeze. [*See* Qwest Witness McIntyre Testimony, Exhibit SAM-9, p.2] Moreover, if the freeze lift is requested on a Friday afternoon, will the freeze be lifted that day, or Saturday or Monday? Can the CLEC place an order on Saturday or must it wait until Monday? Indeed, it will be at least until the next business day before the CLEC can safely place an order to transfer service. It is also possible that a request to lift a freeze on Friday could result in a CLEC being unable to place an order until the following Monday, thus delaying the transfer by three days. Cox submits that the minimum one-day delay between freeze lift request and the ability to place an order that is not rejected effectively creates a situation where it is not known how long will it take for the freeze to be lifted.

The lifting of the freeze would be necessary to avoid having a CLEC's local service request to port a customer rejected by Qwest.

Fourth, the CLEC must know when the freeze is lifted so that it can avoid having its personnel repeatedly transmit LSRs and number porting requests that will be rejected if Qwest has not completed the activity. In fact, as set forth in Qwest's Wholesale Business Procedures, it appears that a CLEC will not be notified when a freeze is lifted; rather a CLEC simply must assume that the freeze will no longer appear on a customer's account the day after the freeze is requested. The timing of lifting the freeze will determine how and when a customer will be able to switch to a facilities-based CLEC because it impacts the time of the port, the local government permitting for the new provider's drops, the scheduling of truck rolls for installation, the time the customer would need to be at home to await the technician, etc. All of this extra coordination also has the effect of raising competitor's cost of competing with Qwest. The extra steps in processing the order, as well as the extra time spent contacting and communication with customers introduce very real and unnecessary additional costs at a time when CLECs are struggling to compete against Qwest.

Qwest's Business Procedures also describe a process where the CLEC representative can initiate a three-way call to Qwest's Business Office to have the Freeze lifted. This is approach is impractical because, unless the customer informs the CLEC CSR that they placed a Local Service Freeze on their account during the initial contact to establish service with the CLEC, as discussed above, the hundreds of CSRs used by Cox to handle customer calls do not have access to Qwest's IMA OSS and would not know of the freeze until after the contact has ended. Even if the customer informs the CLEC CSR that a Local Service Freeze exists on the account, there is no guarantee that Qwest will handle the call expeditiously. In some cases, the Qwest Business Office may be closed, making such a three-way call impossible.

7. ANTICOMPETITIVE IMPACTS

Q. PLEASE DESCRIBE COX'S CONCERNS ABOUT THE ANTICOMPETITIVE IMPACTS OF THE LSF TARIFF.

A. A local service freeze can have particularly detrimental impacts on emerging competition. In FCC 98-334, the FCC recognized, while barely stopping short of prohibiting local carrier freezes, that a local carrier freeze can have a particularly adverse impact on the development of competition in nascent markets.[3] Relevant excerpts of the FCC Order are attached as *Exhibit C*. The FCC acknowledged and discussed a litany of potential anticompetitive activities and impacts that may result from the implementation of a local carrier freeze.[4] Indeed, the increased difficulty for Qwest customers to switch to a competitor will assist Qwest in retaining its massive market share. The FCC noted that the added step of calling an ILEC is sometimes all it takes to prevent a customer from switching carriers and is perhaps the main reason that it concluded that preferred carrier freezes have the potential to be implemented in an anticompetitive manner.[5] For example, by forcing customers to call Qwest as well as the CLEC to switch, Qwest will subject the customer to "Win-Back" scripts, or other efforts to keep that customer with Qwest. That is particularly troublesome in Arizona where Qwest has a "Win-Back" tariff already in place. A copy of that tariff is attached as *Exhibit D*. Given Qwest's enormous market dominance in Arizona, the FCC's concerns about the anticompetitive effects of a local service freeze are amplified.

---

[3] FCC 98-334, Paragraphs 127, 135.

[4] FCC 98-334, Paragraphs 113 to 118.

[5] FCC 98-334, Paragraph 115.

It also is unknown whether Qwest will market other products or services to customers who contact Qwest (or whom are contacted by Qwest) for the sole purpose of requesting or removing a freeze. Under Qwest's freeze removal process, the customer must first call the general Qwest Business Office before being transferred to the Qwest Freeze Removal Group. There is no apparent restriction that would prevent Qwest from attempting to use the either of those freeze removal contacts as a customer retention vehicle.

Potentially even more damaging to nascent residential local competition is the potential that Qwest will use the millions of unrelated consumer contacts it receives to solicit local service freezes to customers who do not need it and would otherwise not have requested the service. Qwest's marketing materials for the LSF service will necessarily cast over-blown concerns about the threat of local service slamming and will likely be matched by alarmist scripts used by its representatives to scare customers into believing their local phone service is at risk. By using these tactics, over time Qwest will create significant barriers to exit for customers who may later choose service from a Qwest competitor.

In light of these potential adverse effects, the FCC has clearly given state public utility commissions the ability to adopt moratoria (or other requirements) on the imposition or solicitation of intrastate preferred carrier freezes.[6] In effect, the FCC acknowledged that states are in the best position to know if local carrier slamming is a problem, if a freeze may have unwarranted anticompetitive impacts on the emerging competitive markets, the potential for inappropriate conduct by the carrier offering the freeze, etc.[7] However, here in Arizona, Qwest on its own initiative has decided that local carrier freezes are appropriate despite the lack of

---

[6] FCC 98-334, Paragraph 137.

[7] Id.

any local carrier slamming problems in the state. Cox believes that it is this Commission, not Qwest, that should decide whether local carrier freezes are appropriate for Arizona at this time.

Q: HOW DO YOU RESPOND TO QWEST'S ASSERTIONS THAT THE FCC HAS BLESSED LOCAL SERVICE FREEZES AND THAT OTHER CLECs HAVE SUCH FREEZES IN PLACE?

A: Cox stands by its contention that the FCC has substantial concern about the anticompetitive effect of the implementation of an LSF in a market with little competition. The FCC has stated:

> We share concerns about the use of preferred carrier freeze mechanisms for anticompetitive purposes. We concur with those commenters that assert that, where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced. Aggressive preferred carrier freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct. We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.[8]

The FCC further provided that:

> We find that states – based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdictions – may conclude that the negative impact of such freezes on the development of competition in the local and intraLATA toll markets may outweigh the benefit to consumers.[9]

---

[8] FCC 98-334, Paragraph 135 (footnotes omitted).

[9] FCC 98-334, Paragraph 137.

Furthermore, it is disingenuous for Qwest to attempt to justify its LSF tariff by reference to the fact that other CLECs have either an LSF tariff or a win back tariff. Qwest continues to be intent on ignoring its enormous market share – particularly in the residential market – and its resulting market power. That market power is the foundation of the potential anticompetitive mischief from Qwest's tariffs. CLEC tariffs are not a fair or tenable comparison.

Q. DO YOU BELIEVE THE FCC RULES ON LOCAL SERVICE FREEZES WILL BE EFFECTIVE IN ELIMINATING ABUSES OF THE LSF TARIFF BY QWEST?

A. No. Although Qwest asserts that it will act in accordance with the FCC rules concerning local service freezes, Qwest has not provided adequate information to determine whether the proposed local service freeze meets the requirements of the rules. Indeed, the minimal information Qwest has provided raises doubt that Qwest will meet the FCC requirements. For example, Qwest's initial customer "notice" that Qwest provided to Cox in response to Cox's December 28, 2001 letter raising concerns about the LSF (a copy is attached as *Exhibit E*) is somewhat terse, vague and alarmist – not clear and neutral as required by 47 CFR § 64.1190(d)(1). Moreover, that notice itself implies that there is a problem with local carrier slamming – implicitly disparaging Qwest's competitors – when in fact no such problem exists in Arizona. The proposed notice attached to Qwest witness McIntyre (Exhibit SAM-7) is no better and creates the same problems. Such conduct will further undermine the development of a competitive market in Arizona to the detriment of consumers and CLECs while bolstering Qwest's ability to retain its market share.

Qwest's conduct under its freeze tariffs in other states casts further doubt on the effectiveness of the FCC rules on ensuring proper conduct by Qwest. For example, in Colorado, even with FCC regulations in place that allow three-way calls between the ILEC, CLEC and subscriber to lift the freeze,[10] Qwest has shown an inability to successfully allow these calls to occur, a happenstance that of course is in Qwest's self-interest. The Colorado Public Utilities Commission has specifically admonished Qwest for unacceptably poor handling of the three-way call requirement, and Cox does not wish to repeat the problem in Arizona with local service freezes.[11]

Qwest's LSF service in the State of Washington apparently has been disastrous, particularly in the residential market. Attached as *Exhibit G* is an electronic copy of a recent complaint filed by AT&T Broadband Phone of Washington. This complaint sets forth a litany of problems with the local service freeze: (i) customers unaware that Qwest had place a freeze on their accounts (certainly they would not know do to the lack of any charge for the service); (ii) customers being unable to lift the freeze; (iii) AT&T orders being rejected even after the freeze was ostensibly lifted; (iv) Qwest providing inaccurate information to customers on the freeze and the related lift-freeze process; (v) substantial delays and run-arounds for customers trying to lift the freeze even with AT&T assistance; and (vi) ineffective escalation procedures to resolve the problems.

The Washington experience is a real world realization of the potential problems Cox foresees with Qwest's LSF tariff in Arizona.

---

[10] *See* FCC 98-334, Paragraph 129. 47 U.S.C. § 64.1190(e)(2) has been amended to include the requirement.

[11] Colorado PUC Recommended Decision No. R99-1362, Decision on Exceptions, Adopted Mar. 22, 2000. The CPUC stated in Paragraph 11: "In some cases, the carrier was able to set up a three-way call including USWC and establish the customer's choice of carrier. However, the three-way call was an option that rarely worked because of the logistics and time involved. The evidence at hearing supported a finding that there were in excess of 16,000 customers who were blocked from their first intraLATA choice because of the PIC freeze policy. Many did not subsequently reaffirm their initial choices." An electronic copy of that decision is attached as *Exhibit F*.

8. Need for Tariff

Q. DO YOU AGREE THAT QWEST DOES NOT NEED A TARIFF FOR ITS LSF SERVICE?

A. Qwest's own notice to CLECs calls this a "service." Regardless, A.R.S. § 40-250(b) addresses both "practices" and "services" which do not have the effect of imposing or increasing rates or charges. Moreover, there are many tariffed services for which there is not a charge. A tariff filing provides notice to interested parties and the ability to intervene to support or oppose such a tariff, as well as to suggest language and safeguards that should be included, regardless of whether there is a charge. However, Cox defers to the Commission on the ultimate issue of whether a tariff is required.

9. Other Considerations

Q. ARE THERE OTHER ISSUES THAT THE COMMISSION SHOULD CONSIDER ON DECIDING WHETHER TO APPROVE THE LSF TARIFF?

A. The potential impacts of the LSF tariff on the transfer of customers also could affect whether or not Qwest has met all of its obligations under Section 271.

There are two areas of potential concern to Cox regarding Qwest's Section 271 compliance: the Public Interest element and Local Number Portability. With respect to the Public Interest element, an LSF tariff casts significant doubt on whether the market is irreversibly opened to competition, particularly when Qwest also has a Win Back tariff in place. First, Qwest can damage nascent residential local competition by using the millions of unrelated consumer contacts it receives to solicit local service freezes from customers who do not need it and would otherwise not have requested the service. That allows Qwest to build a significant barrier to CLEC entry into the market. Second, once that LSF barrier is constructed, Qwest can take advantage of the requirement that customers "directly" contact Qwest to lift the freeze. There is no apparent restriction that would prevent Qwest from attempting to use the freeze removal contact as a customer retention vehicle through its Win-Back tariff. Indeed, the LSF tariff is the perfect scheme for Qwest to immediately identify customers eligible for Win-Back discounts and to win them back before they ever physically transfer to a CLEC. Third, it is not known how or when a CLEC will know if a freeze is in place for a particular customer. Lack of timely knowledge can lead to frustration and dissatisfaction on the part of the customer who is trying to switch carriers. By using these tactics, over time Qwest will create significant barriers to exit for customers who may later choose service from a Qwest competitor. Qwest also will chill competition by erecting significant barriers to a CLEC's ability to fairly compete for customers. All of this casts doubt on whether the local exchange market – particularly the residential market – is irreversibly opened to competition and whether Qwest has satisfied the Public Interest Element of the Section 271 requirements.

The proposed LSF tariff also implicates Checklist Item 11 – Local Number Portability ("LNP") – as well as OSS testing involving LNP.[12] As noted above, the LSF adds a critical step to the customer transfer process. If a customer has LSF, the pre-ordering and ordering processes, including LNP, for all customer transfers must take into account the potential additional step of having the LSF lifted. That potentially enormously burdensome step was not considered in any of the OSS testing, yet it is a single step that could jeopardize the transfer if not handled properly by Qwest. It also introduces a manual step involving the inherently human-error prone nature of such activities. The need to record

[12] Although Cox and Qwest had resolved their prior LNP issues in the 271 docket, the implementation of the LSF tariff would raise additional issues that need to be addressed.

correctly and then place an 8-digit Record order number on the LSR is an additional opportunity for error and LSR rejects, either through CLEC error or Qwest error. This aspect of local number portability was not discussed in the Qwest 271 proceeding regarding Checklist Item 11 nor was it contemplated in the OSS Testing. As such, Cox believes that the Commission will need to consider the impact of the LSF tariff (if it is approved) in the context of the 271 proceeding even if it means re-opening items that were deemed closed.

10. <u>QWEST LSF TARIFFS IN OTHER STATES</u>

Q. HAS QWEST PROPOSED AN LSF FREEZE IN OTHER STATES?

A. Yes, along with the December 17, 2001 notice concerning Arizona, Qwest announced its intent to offer an LSF in several other states. However, since that announcement, four states have rejected the proposed tariff (Iowa, Nebraska and Montana, Minnesota and Nebraska) and Qwest has withdrawn its tariff in another state (New Mexico).

In Iowa, the Iowa Utilities Board ("IUB") has prohibited Qwest from implementing a local service freeze at this time, noting the relative lack of local service slamming and the small percentage of market share held by CLECs. An electronic copy of the April 3, 2002 IUB decision is attached as *Exhibit H*.

In Montana, the Montana Public Service Commission ("MPSC") imposed an 18-month moratorium on Qwest's proposed local service, noting that at this time there is no apparent need for such a freeze and that a freeze would have an anti-competitive effect of unduly locking in customers to Qwest. A copy of the April 25, 2002 MPSC decision is attached as *Exhibit I*.

In Minnesota, the Minnesota Public Utilities Commission ("MPUC") issued an Order rejecting Qwest's local service freeze option and requiring Qwest to stop offering it at this time, noting that (i) there is no local service slamming problem in Minnesota, (ii) local competition is at a fragile state of development in

Minnesota, and (iii) it would be difficult to assure that in practice the LSF would not be operated in a way more directly burdensome to competition than Qwest acknowledges. An electronic copy of the May 7, 2002 MPUC order is attached as *Exhibit J.*

In Nebraska, the Nebraska Public Service Commission ("NPSC") also has prohibited Qwest from implementing a local service freeze at this time, noting the relative lack of local service slamming. A copy of the May 7, 2002 NPSC decision is attached as *Exhibit K.*

In New Mexico, on May 1, 2002, Qwest filed a motion to withdraw its proposed LSF tariff. A copy of the motion is attached as *Exhibit L.*

In addition to these Qwest states, several other state commissions also have determined that unregulated preferred carrier freezes are susceptible to abuses.[13]

11. <u>RECOMMENDATIONS TO THE COMMISSION</u>

Q. MR. GARRETT, DO YOU HAVE ANY RECOMMENDATIONS FOR THE COMMISSION?

A. This Commission should reject Qwest's tariff. The FCC has given the Commission that authority and recognized, even in late 1998 at the height of CLEC entrance into the market, that preferred local carrier freezes may not be needed in some markets. Today, in 2002, competition has not flourished like many hoped it would, local slamming almost never occurs, and a preferred carrier freeze is simply an anti-competitive tool for Qwest to stifle competition.

If the Commission concludes a local service freeze is in the public interest at this time, it may want to consider whether Qwest is the appropriate entity to administer such a freeze. In the long distance market, neutral third parties hired by

[13] FCC 98-334, Paragraph 115, Footnote 361 lists the state commission rulings regulating freezes, including Michigan, Ohio, New Jersey, California and North Carolina.

the carriers have the responsibility of verifying a customer's desire to switch carriers. In the local market, with vastly fewer customers changing carriers and little significant competition, Cox maintains there is no reason, save monopolistic protectionism, for Qwest to implement the freeze. Nonetheless, if it must occur, Cox suggests a neutral third party is far superior to hoping Qwest will adequately staff this area of its customer service function.

12. CONCLUSION

Q. DOES THAT CONCLUDE YOUR TESTIMONY, MR. GARRETT?

A. Yes, it does.

Exhibit A

Arizona
T-01051B-02-0073
COX 01-002

INTERVENOR: Cox Arizona Telecom

REQUEST NO: 002

Please identify each incident of local service slamming that Qwest has experienced in Arizona since January 1, 2000 by providing the following information for each incident:

(i) Date of slamming;

(ii) City in which slammed customer was located;

(iii) Whether customer was a residential or business customer;

(iv) How many access lines were slammed;

(v) Name of CLEC that engaged in the slamming;

(vi) Whether CLEC was providing service to slammed customer through resale of Qwest service, use of Qwest UNEs or other method of service; and/or

(vii) Whether the slamming resulted in an ACC or FCC complaint. If so, please provide a copy of the complaint and the response/resolution.

RESPONSE:

Qwest has identified 1 incident of local slamming that it has experienced in Arizona since January 1, 2000. See below for the details requested in (i) through (vii).

It should be noted however, that Qwest receives hundreds of informal complaints each month from a variety of sources (e.g. FCC, ACC, Qwest Officers, Qwest's Customer Advocacy Center, Better Business Bureau, Attorney General, and media outlets). Some of these may include local slamming issues. However, it would be impossible to determine whether any of these complaints included local slamming without conducting a special study. At this time, Qwest has no plans to undertake such a study.

(i) Slam date: 05/04/01

(ii) Oracle, Az

(iii) Residential

(iv) 1 line

(v) Z-Tel

(vi) Resale

(vii) The slamming did not result in either an FCC or an ACC complaint

Respondent: Susan McKown

Exhibit B

Wholesale

Business Procedures

Local Service Freeze - V9.0

History Log

Description

Local Service Freeze prohibits an unauthorized change of an end-user's local service from one local service provider to another. This option is available to prevent local service slamming.

This freeze is added at the Working Telephone Number (WTN) level so th end-user may choose to freeze one line, several, or all lines on their account. Only one order per account is needed if changing the Local Service Freeze status. The end-user may request the add or removal of Local Service Freeze at any time.

The Local Exchange Freeze on Voice Services (LEFV) indicator must be removed from the account before a request to change local service providers can be processed. The end-user must contact their existing local service provider to remove the Local Service Freeze from their account. Requests received to change local service provider on an account with Local Service Freeze will be rejected. Qwest will provide the message "Features on account are not compatible with requested features". The message "Please have the end-user contact current local service provider to have Local Service Freeze removed" will appear in the Customer Comments section.

Local Service Freeze is available on all voice services (dial tone) at the working telephone number line level.

Qwest Retail Business Office Hours
The following table identifies the Qwest Business Offices, states they serve, associated telephone numbers, and business hours:

Qwest Business Office	States	Telephone Number	Hours
Residential	All	800-244-1111	Central time zone - until 9:00 PM Mountain time zone - until 8:00 PM Pacific time zone -

- Directory Ordering
- Early Order Opportunity
- Electronic Access
- Expedites and Escalations Overview
- Features
- Forecasting
- Formal Complaint Process
- Geographic Deaveraging
- Local Service Freeze
- Local Service Ordering Guidelines (LSOG)
- Long Distance Carrier Selection
- Maintenance & Repair Overview
- Manual Interfaces
- Migrations and Conversions
- Negotiations Process
- Negotiations Template Agreement
- New Customer Questionnaires
- Ordering Overview
- Pre Ordering Overview
- Proof Of Authorization/Letter Of Agency (LOA)
- Provisioning & Installation Overview
- Regulatory Commissions
- Service Intervals
- Tariff Locations
- Technical Publications

			until 7:00 PM
Global/Large Business	All	800-549-5629	Central time zone - until 6:00 PM Mountain time zone - until 6:00 PM Pacific time zone - until 5:00 PM
Small Business	All	800-603-6000	Central time zone - until 5:30 PM Mountain time zone - until 6:30 PM Pacific time zone - until 7:30 PM
Interconnection Wholesale Service Center for Qwest retail Public Access Lines (PAL) accounts only	All	888-796-9087	Central time zone - until 7:00 PM Mountain time zone - until 8:00 PM Pacific time zone - until 9:00 PM NOTE: The PAL center is in Arizona. Effective with Day Light Savings, Arizona is on the same time as the Pacific time zone.
Federal Services	All	800-879-1023	Central time zone - until 7:00 PM Mountain time zone - until 6:00 PM Pacific time zone - until 5:00 PM
Government and Education	Colorado, Nebraska, North Dakota, South Dakota	800-405-3594	Central time zone - until 7:00 PM Mountain time zone - until 8:00 PM
Government and Education	Idaho, Oregon, Utah, Washington, and Wyoming	866-221-6073 Global Business	Mountain time zone - until 6:00 PM Pacific time zone - until 5:00 PM

Availability

Local Service Freeze is available throughout Qwest's 14-state local servic territory except in the states of Arizona, Iowa, Minnesota, Montana, Nebraska, and New Mexico.

The following table identifies the state specific Local Service Freeze effective dates:

▸ **Telecommunications Associations**

▸ **Unauthorized Service Provider Change**

▸ **USOC/FID Finder**

State(s)	Effective Date
Washington	March 10, 2001
Colorado and Utah	December 17, 2001
Idaho, North Dakota, Oregon, South Dakota, and Wyoming	January 17, 2002

Back to Top

Pricing

Rates
There are no charges associated with adding or removing Local Service Freeze.

Back to Top

Features/Benefits

Local Service Freeze prohibits the unauthorized change of an end-user's local service from one provider to another.

Back to Top

Applications

See Features/Benefits

Back to Top

Implementation

Product Prerequisites
If you are a new CLEC and are ready to enter the Interconnection business with Qwest, please view the Getting Started as a Facility-Based CLEC or the Getting Started as a Reseller web pages. If you are an existing CLEC wishing to amend your Interconnection Agreement or your New Customer Questionnaire, you can find additional information in the Negotiations Template Agreement web page.

Back to Top

Pre Ordering

General pre-ordering information is located in the Pre-Ordering Overview.

Reviewing the Customer Service Record (CSR) is one of the pre-ordering functions normally performed prior to initiating a request.

Lines or accounts with an existing Local Service Freeze will have the LEFV Field Identifier (FID) following the line assignable Universal Service Order

Code (USOC), e.g., 1FR/NPA-nnn-nnnn/LEFV, 1FR/NPA-nnn-nnnn/LEFV/RSID, U5R/NPA-nnn-nnnn/LEFV/ZCID on each line that has a Local Service Freeze.

Back to Top

Ordering

General ordering activities are identified in the Ordering Overview.

Adding Local Service Freeze

Qwest Retail Customers
Retail end-users may contact their Qwest Business Office to have Local Service Freeze added to their account. The end-user will be transferred tc a Qwest Third Party Verifier where their account information will be verified, the call recorded, and a Record order issued to add Local Service Freeze.

The following table lists the actions required for adding a Local Service Freeze on a Qwest Retail Account:

STEP	ACTION
1	End-user contacts Qwest Business Office
2	End-user is transferred to Third Party Verifier to have account information verified, the call is recorded, and a Record order issued to add Local Service Freeze

Adding Local Service Freeze

Wholesale Customers
The following table lists the actions required for adding a Local Service Freeze on a Qwest Wholesale Account:

STEP	ACTION
1	End-user contacts their local service provider
2	The local service provider submits a LSR (or appropriate form) to add Local Service Freeze to an account (with A in LSCP field)
3	Qwest processes the LSR and issues the Record order to add LEFV to an account

Local Service Freeze requests are submitted using the LSOG forms. Detailed information describing field entry requirements are available on the LSOG web page.

Local Service Freeze orders are placed using the following LSOG forms:

- Local Service Request (LSR)
- End User (EU)
- Centrex Resale Service (CRS), based on the product
- DID Resale Service (DRS), based on the product

- Port Service (PS), based on the product
- Resale Service (RS), based on the product

The LSCP field on the CRS, DRS, PS or RS form is used to add or remove a Local Service Freeze.

- To add a Local Service Freeze, populate the LSCP field with A
- To remove a Local Service Freeze, populate the LSCP field with B

The Feature Detail field of the RS, DRS, PS or RS form is used to add or remove a Local Service Freeze. The LEFV FID must be used for each telephone number adding or removing the Local Service Freeze.

Local Service Freeze can be ordered on following products using Interconnect Mediated Access (IMA), or faxed to (888) 796-9089:

- Analog Line Side Port
- Digital Line Side Port
- Public Access Lines (PAL) Payphone Service Providers (PSP)
- Resale - Centrex and Centrex 21
- Resale - Integrated Services Digital Network Basic Rate Interface (ISDN BRI)
- Resale - Plain Old Telephone Service (POTS)
- Resale - PAL
- Resale - Qwest Digital Subscriber Line (DSL)
- Unbundled Network Elements-Platform (UNE-P) POTS
- UNE-P ISDN BRI

Local Service Freeze requests for all other products are ordered manually The applicable LSOG forms should be faxed to (888) 796-9089.

Removing Local Service Freeze

Qwest Retail Customers
Qwest Retail end-users may contact their Qwest Business Office to have Local Service Freeze removed from their account. The end-users will be transferred to a Qwest Freeze Removal Group where their account information will be verified and a Record order issued to remove Local Service Freeze.

You and the Qwest retail end-user can initiate a three-way call to Qwest and a Record order will be issued to remove the Local Service Freeze the same day. You must request the Record order number (eight-digit number) from the Sales consultant to include on your LSR.

The following table lists the actions for removing a Local Service Freeze on a Qwest Retail account when the end-user is transferring local service to a new provider.

STEP	ACTION
1	End-user contacts new local service provider to request service
2	End-user contacts Qwest to have Local Service Freeze removed NOTE: Can be with or without the CLEC on the line
3	Record order due today is issued to remove Local Service Freeze

	NOTE: CLEC must request the Record order number
4	CLEC issues LSR to change the end-users service the same day Local Service Freeze is removed NOTE: CLEC must include Record order number in Remarks field or RORD field

The following table lists the actions required for removing a Local Service Freeze on Qwest Wholesale account:

STEP	ACTION
1	End-user contacts new local service provider to request service
2	Local service provider issues LSR (or appropriate form) to change end-user service. Proceed to step 3OrLocal service provider receives a CSR that indicates there is a Local Service Freeze on the account. Proceed to step 4
3	LSR is rejected due to Local Service Freeze
4	New local service provider contacts end-user regarding Local Service Freeze
5	End-user contacts old local service provider to remove Local Service Freeze
6	Old local service provider issues LSR (or appropriate form) to remove Local Service Freeze (with B in LSCP field)
7	New local service provider issues LSR to change end-user service

To expedite the removal of a Local Service Freeze, you may call 877-719-4294 with the end-user on the line.

To escalate any other concerns with Local Service Freeze, you may call the Interconnect Service Center at 888-796-9087 (option 1 for resale, option 2 for LNP). Qwest has established a point of contact for CLECs and the Service Delivery Coordinators at that number have been trained to assist with Local Service Freeze related issues. If a Local Service Freeze needs to be added or removed, they will advise you to have the end-user call the appropriate number.

Back to Top

Training

Qwest 101 "Doing Business With Qwest"

- This introductory instructor-led training course is designed to teach the CLEC and Reseller how to do business with Qwest. It will provide a general overview of products and services, Qwest billing and support systems, processes for submitting service requests, reports, and web resource access information. Click here for Course detail and registration information.

IMA Hands On

- This introductory instructor-led training course teaches you how to use Qwest's IMA Graphical User Interface (GUI) to order wholesale products. You will experience interactive software demonstrations and participate in hands-on practice sessions to familiarize yoursel with the IMA GUI system. Click here to learn more about this course and to register.

POTS Product Overview

- This instructor-led training course provides an overview of the Plair Old Telephone Service (POTS) product. This course will provide a general overview of the POTS product and the various features associated with POTS. Click here to learn more about this course and to register.

POTS Resale

- This instructor-led process and systems training course provides ar overview of POTS Resale products as well as the processes for submitting the service request via Interconnect Mediated Access (IMA). The processes covered are Preorder, Order, Post Order, Provisioning, Billing and CEMR Maintenance and Repair. Click here to learn more about this course and to register.

DSL Resale via IMA

- This self-directed, web-based process and systems training course provides an overview of the DSL Resale product as well as the processes for submitting the service request via Interconnect Mediated Access (IMA). The processes covered are PreOrder, Order, Post Order, Provisioning, Billing, and CEMR Maintenance anc Repair.

  Qwest DSL Service is a data solution that utilizes Digital Subscribe Line (DSL) technology to transport a high capacity, bi-directional data stream over a single pair of copper wires, along with Plain Olc Telephone Service (POTS). Click here to learn more about this course and to register.

ISDN PRS

- This self-directed, web-based product training course provides you with knowledge of the Qwest Integrated Services Digital Network (ISDN) Primary Rate Service (PRS) product. You will learn how ISDN PRS, also referred to as ISDN Primary Rate Interface (PRI), works and the options available. Click here to learn more about this course and to register.

Unbundled Network Elements-Platform (UNE-P) POTS

- This instructor-led, process and systems training course is designed to provide an overview of the UNE-P POTS service as well as the processes for submitting the service request via IMA. The processes covered are PreOrder, Order, Post Order, Provisioning, Billing, and CEMR Maintenance and Repair. Click here to learn more about this course and to register.

View additional Qwest courses by clicking on Course Catalog.

Back to Top

Contacts

Qwest contact information is available in the Wholesale Customer Contacts.

Back to Top

Frequently Asked Questions (FAQs)

1. How long does it take to have a Local Service Freeze added or removed from an account?
If adding or removing the Local Service Freeze is the only activity on the account, a Record order will be issued with a same day due date. The addition or removal is effective the day the order is issued.

If the Local Service Freeze is being added or removed on a service where other account activity is taking place, the freeze won't be effective until the date that order is completed.

2. Once the Local Service Freeze is removed from the Qwest retail end-user's account, how soon can I issue my LSR to change their service?
You can issue your LSR the same day. You must include the Record order number that was provided to you and your customer in the Remarks section or in the RORD field on the LSR.

3. What if I have done a three-way call with the end-user to have the Local Service Freeze removed but the CSR still shows the LEF\ on the account?
You can still issue your LSR the same day the freeze was removed as lon(as you include the Record order number for the Local Service Freeze removal in the Remarks section or in the RORD field on the LSR.

Local Service Freeze information is contained in a Freeze Repository which is updated when the Record order to remove the Local Service Freeze is completed. The Repository updates each night while the CSR takes 3-5 days to reflect the change in freeze status. Processing the LSR will be based on what is in the Repository versus the CSR.

4. Can I add Local Service Freeze to my customer's lines or account at the same time I make other changes to the account?
Yes, show A as the value in the LSCP field. Remember, if you add the freeze while doing other order activity, the freeze won't be in effect until the actual due date of that order.

5. What kind of questions are the Qwest Retail end-user asked when they add a Local Service Freeze?
Local Service Freeze is an option for Qwest end-users and is only added at the end-user's request. Qwest's process to add a Local Service Freeze includes several steps to ensure the end-user is fully informed about the local service freeze, including the process to remove a freeze. If an end-user indicates a desire to establish a freeze, they are transferred to a Third-Party Verifier who verifies that the end-user is responsible for the account, and confirms the specific telephone numbers to which a freeze is to be applied.

6. Why is the freeze sometimes removed on a Change order?
If there is other activity taking place on the account at the same time the freeze is being added or removed, a Change order will be issued rather than a Record order. In place of the Record order number, you will include the Change order number on the LSR in the Remarks section or ir the RORD field.

Back to Top

Last Update: April 19, 2002

SEARCH GO ABOUT QWEST | CAREERS AT QWEST

Exhibit C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 17, 1998 Released: December 23, 1998

Comment Date: 30 days from publication in the Federal Register
Reply Comments Date: 45 days from publication in the Federal Register

By the Commission: Commissioners Ness and Tristani issuing statements;
Commissioner Powell concurring in part, dissenting in part and issuing a statement and
Commissioner Furchtgott-Roth dissenting and issuing a statement

Table of Contents

I. INTRODUCTION

1. In this Second Report and Order and Second Further Notice of Proposed Rulemaking (*Order*), we adopt rules proposed in the First Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration (*Further Notice and Order*)[2] to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).[3] Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."[4] The goal of section 258 and this *Order* is to eliminate the practice of "slamming." A subscriber may authorize a change of his or her long distance carrier, or other telecommunications carrier, by requesting the change directly from his or her local exchange carrier (LEC), or by authorizing the new carrier to request a change on his or her behalf. Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization. Slamming nullifies the ability of consumers to select the telecommunications providers of their choice. Slamming also distorts the telecommunications market because it rewards those

---

2 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10,674 (1997) (*Further Notice and Order*).

3 47 U.S.C. § 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The principal goal of the Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement).

4 47 U.S.C. § 258(a).

companies who engage in deceptive and fraudulent practices by unfairly increasing their customer base at the expense of those companies that market in a fair and informative manner and do not use fraudulent practices.

2. The numerous complaints we continue to receive and the input of the state commissions and the state attorneys general provide ample evidence that slamming is an extremely pervasive problem.[5] Indeed, slamming is so rampant that it garnered significant attention in Congress in 1998 during the post-legislative session, although ultimately no legislation was passed.[6] Despite the Commission's existing slamming rules, our records indicate that slamming has increased at an alarming rate. In 1997, the Commission processed approximately 20,500 slamming complaints and inquiries, which is an increase of approximately 61% over 1996 and an increase of approximately 135% over 1995.[7] From January to the beginning of December 1998, the Commission processed 19,769 slamming complaints.[8] Furthermore, the number of slamming complaints filed with the Commission is a mere fraction of the actual number of slamming incidents that occur.[9]

3. The Commission recently has increased its enforcement actions to impose severe financial penalties on slamming carriers. Since April 1994, the Commission has imposed final forfeitures totaling $5,961,500 against five companies, entered into consent decrees with eleven companies with combined payments of $2,460,000, and has proposed $8,120,000 in penalties against six carriers.[10] Additionally, the Commission may

---

5 *See, e.g.*, National Association of Attorneys General (NAAG) Comments at Appendix (containing sampling of consumer complaints); Florida Commission Comments at 1 (stating that it received 2,393 slamming complaints in 1996 and that slamming is the number one telecommunications complaint received by the Florida Commission); NCL Comments at 3 (stating that in 1997, slamming ranked as the sixth most frequent subject of complaint to the National Fraud Information Center, a hotline for reporting fraud). A list of the commenters and their identifying abbreviations is in Appendix C.

6 William E. Kennard, Chairman of the FCC, received letters from Congress urging the Commission to implement anti-slamming rules and acknowledging that Congress did not pass slamming legislation. *See* Letter from Senator John McCain to William E. Kennard, Chairman, FCC (Oct. 30, 1998); Letter from Congressman Tom Bliley, *et al.* to William E. Kennard, Chairman, FCC (Dec. 11, 1998).

7 Consumer Complaints and Inquiries, Consumer Protection Branch, Enforcement Division, Common Carrier Bureau, Federal Communications Commission (Oct. 31, 1998).

8 *Id.*

9 For example, AT&T estimates that 500,000 of its customers were slammed in 1997. Mike Mills, *AT&T Unveils Plan to Cut "Slamming,"* Wash. Post, Mar. 4, 1998, at C1.

10 Slamming Enforcement Actions, Enforcement Division, Common Carrier Bureau, Federal

sanction a carrier by revoking its operating authority under section 214 of the Act.[11] The Commission recently has resorted to such sanctions against carriers for repeated slamming and other egregious violations of the Act and our rules.[12]

4. The new rules we adopt in this *Order* are not merely intended to conform our existing rules with the provisions of section 258, but also operate to establish a new comprehensive framework to combat aggressively and deter slamming in the future.[13] With our new rules, we seek to close loopholes used by carriers to slam consumers and to bolster certain aspects of the rules to increase their deterrent effect. At the heart of the new slamming rules is our determination to take the profit out of slamming. Our new rules absolve subscribers of liability for some slamming charges in order to ensure that carriers do not profit from slamming activities, as well as to compensate subscribers for the confusion and inconvenience they experience as a result of being slammed. As an additional deterrent, we strengthen our verification procedures and broaden the scope of our slamming rules.

5. Our new rules strengthen the rights of consumers in three areas: (1) the relief given to slamming victims; (2) the method by which a carrier must obtain customer verification of preferred carrier change requests; and (3) the method by which a consumer can "freeze" his or her existing carrier, thus prohibiting another carrier from claiming that it has been authorized to request a carrier change on behalf of the consumer. More specifically, with respect to compensation, under our new rules a subscriber will be absolved of liability for all calls made within 30 days after being slammed.[14] If however,

---

Communications Commission (Dec. 17, 1998).

11 *See* 47 U.S.C. § 214; *see also CCN, Inc. et al.*, Order, 12 Comm. Reg. (P & F) 104 (1998) (revoking the operating authority of the Fletcher Companies because they slammed long distance telephone subscribers and committed other violations of the Communications Act of 1934, as amended) (*Fletcher Order*).

12 *Fletcher Order*, 12 Comm. Reg. (P & F) at 104.

13 In light of this new framework, and the addition of new rules, we have redesignated and renumbered the existing verification rules such that the current section 64.1100 is redesignated as 64.1150, and the current section 64.1150 is redesignated as 64.1160. *See* Appendix A. *See also* 47 C.F.R. §1.412(c) (stating that rule changes may be adopted without prior notice if the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest).

14 *See infra* discussion on Liability of the Slammed Subscriber. This modifies our current rule under which a slammed consumer is liable for the amount he or she would have paid the authorized carrier for absent the unauthorized change. *See Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9579 (1995) (*1995 Report and Order*).

the subscriber fails to notice that he or she has been slammed and pays the unauthorized carrier for such calls, section 258(b) of the Act requires the unauthorized carrier to remit such payments to the authorized carrier.[15] Upon receipt of this amount, the authorized carrier shall provide the subscriber with a refund or credit of any amounts the subscriber paid in excess of the authorized carrier's rates.[16] The unauthorized carrier must also pay the authorized carrier for any expenses incurred by the authorized carrier in restoring the subscriber's service or in collecting charges from the unauthorized carrier.[17] These liability rules will not take effect for 90 days, however to enable interested carriers to develop and implement an alternative independent entity to administer compliance with these rules on their behalf.[18] If carriers successfully implement such a plan, we will entertain carriers' requests for waiver of the administrative requirements of our liability rules.[19]

6. This *Order* also modifies the methods by which a carrier can fulfill its obligation to obtain consumer verification of carrier change requests. In particular, we eliminate the "welcome package"[20] as a verification option because we find that it has been subject to abuse by carriers engaged in slamming.[21] Also in connection with verification, we (1) extend our verification rules to apply to carrier change[22] requests

---

15 *See infra* discussion on Investigation and Reimbursement Procedures.

16 *See infra* discussion on Subscriber Refunds or Credits.

17 *See infra* discussion on Investigation and Reimbursement Procedures.

18 *See infra* discussion on Third Party Administrator for Dispute Resolution.

19 The following rule provisions in Appendix A impose administrative requirements on the authorized carrier: section 64.1100(c), (d); section 64.1170; section 64.1180. Upon being granted an above-mentioned waiver, the authorized carrier would be permitted to discharge its obligations under these rules by having the neutral third party perform the administrative functions in these rules. *See infra* discussion on Third Party Administrator for Dispute Resolution.

20 The welcome package is an information package mailed to a consumer after the consumer has agreed to change carriers. It includes a prepaid postcard, which the customer can use to deny, cancel, or confirm the change order.

21 *See infra* discussion on The Welcome Package.

22 In the *Further Notice and Order*, we stated that we would use the term "preferred carrier" or "PC" to describe the subscriber's properly authorized or primary carrier(s) (a subscriber may have multiple preferred carriers - one for local exchange service and one for long distance service), as contemplated by the Act. We will use the term "carrier change," however, instead of "PC change," to further distinguish a change in telecommunications carrier from the former term "PIC change," which referred only to a change in a subscriber's primary interexchange carrier.

made during consumer-initiated (in-bound) calls to carriers,[23] rather than being applicable solely to outbound calls made by carriers to consumers; (2) extend our verification rules to apply, with a limited exception, to all telecommunications carriers in connection with changes of all telecommunications service, including local exchange service;[24] and (3) clarify that all carrier changes must be verified in accordance with one of the options provided in our rules, regardless of the manner of solicitation.[25] Finally, we set forth rules governing the preferred carrier freeze process, including verification requirements for imposing a freeze and mandating certain methods for lifting a freeze.[26]

7. This *Order* also contains a Further Notice of Proposed Rulemaking, in which we propose several additional changes to further strengthen our slamming rules and otherwise prevent slamming. In particular, we seek comment on: (1) requiring unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers; (2) requiring resellers to obtain their own carrier identification codes (CICs) to prevent confusion between resellers and their underlying facilities-based carriers; (3) modifying the independent third party verification method[27]

Furthermore, for consistency, we amend the text of the rules to use the term "preferred" in place of the term "primary." *See* Appendix A, §§ 64.1100, 64.1150. *Cf.* 47 C.F.R. § 1.412(c) (stating that rule changes may be adopted without prior notice if the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest). We note that, where appropriate, we will continue to use the term "PIC" in the text of this *Order* to describe a subscriber's primary interexchange carrier prior to the 1996 Act.

23 *See infra* discussion on Application of the Verification Rules to In-Bound Calls. In 1995, we concluded that the Commission's verification rules should apply to in-bound calls. *See 1995 Report and Order*, 10 FCC Rcd 9560 (1995). The Commission, on its own motion, stayed its *1995 Report and Order* insofar as it extends the primary interexchange carrier change (PIC-change) verification requirements set forth in section 64.1100 of the Commission's rules to consumer-initiated calls. *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Order, 11 FCC Rcd 856 (1995) (*In-bound Stay Order*).

24 *See infra* discussion on Application of the Verification Rules to the Local Market and discussion on Application of the Verification Rules to All Telecommunications Carriers. At this time, however, we exclude commercial mobile radio services (CMRS) carriers from compliance with our verification requirements. *See infra* discussion on Application of the Verification Rules to All Telecommunications Carriers.

25 *See* Appendix A, §§ 64.1150, 64.1160.

26 A preferred carrier freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. *See infra* discussion on Preferred Carrier Freezes.

27 *See* 47 C.F.R. § 64.1100(c).

to ensure that it will be effective in preventing slamming; (4) clarifying the verification requirements for carrier changes made using the Internet; (5) defining the term "subscriber" to determine which person or persons should be authorized to make changes in the selection of a carrier for a particular account; (6) requiring carriers to submit to the Commission reports on the number of slamming complaints received by such carriers to alert the Commission as soon as possible about carriers that practice slamming; (7) imposing a registration requirement to ensure that only qualified entities enter the telecommunications market; (8) implementing a third party administrator for execution of preferred carrier changes and preferred carrier freezes.

8. We emphasize that the way to attack the slamming problem is to combat it on several fronts: improving the verification rules, imposing forfeitures and creating other financial disincentives for unscrupulous carriers, and increasing consumer awareness. In addition to prescribing rules to eliminate slamming, the Commission will continue to mete out swift, meaningful punishment for carriers that slam subscribers. Furthermore, the Commission will continue to work with the states to alert consumers about slamming and other telecommunications trends that may affect them, so that consumers can protect themselves from these practices.[28]

---

[28] The Commission started its consumer outreach program in 1995, with the publication of the Common Carrier Scorecard. Furthermore, the Commission's Call Center staff, at 1-888-CALL-FCC, is trained to answer consumer inquiries on slamming.

F. Use of Preferred Carrier Freezes

1. Background

112. In the Further Notice and Order, the Commission sought comment on whether it should adopt rules to address preferred carrier freeze practices.[348] The Commission noted that, although neither the Act nor its rules and orders specifically address preferred carrier freeze practices,[349] concerns about carrier freeze solicitations have been raised with the Commission.[350] The Commission noted, moreover, that MCI filed a Petition for Rulemaking on March 18, 1997, requesting that the Commission institute a rulemaking to regulate the solicitation, by any carrier or its agent, of carrier freezes or other carrier restrictions on a consumer's ability to switch his or her choice of interexchange (interLATA or intraLATA toll) and local exchange carrier.[351] The Commission determined that it was appropriate to consider MCI's petition in the Further Notice and Order and, therefore, incorporated MCI's petition and all responsive pleadings into the record of this proceeding.[352]

2. Overview and Jurisdiction

113. We adopt rules to clarify the appropriate use of preferred carrier freezes

---

348 *Further Notice and Order*, 12 FCC Rcd at 10,687-89. A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent.

349 We noted also that the Common Carrier Bureau Enforcement Division has previously reviewed certain preferred carrier freeze practices and found them to be consistent with the Act and the Commission's rules and orders. *See, e.g.*, Staff Interpretive Ruling Regarding Preemptive Effect of Commission's Regulations Governing Changes of Consumers' Primary Interexchange Carriers and the Communications Act of 1934, As Amended, On Particular Enforcement Action Initiated by the California Public Utilities Commission, DA 96-1077, 11 FCC Rcd 20453 (July 3, 1996); *see also* Letter, Elliot Burg, Esq., Asst. Attorney General, State of Vermont, 11 FCC Rcd 1899 (1995).

350 *See, e.g.*, Letter from Donald F. Evans, MCI Telecommunications Corporation to John Muleta, FCC (July 31, 1996).

351 MCI Petition for Rulemaking, RM-9085 (filed Mar. 18, 1997) (MCI Petition). AT&T has indicated that it "strongly supports" MCI's petition to establish regulations governing preferred carrier freezes. Letter from Mark C. Rosenblum, AT&T Corp. to Regina M. Keeney, FCC (Apr. 9, 1997). The Commission established a pleading cycle for comments regarding the MCI petition. *See* Public Notice, DA 97-942 (rel. May 5, 1997). Comments in response to that Public Notice are referred to as "Petition Comments" and "Petition Replies."

352 *Further Notice and Order*, 12 FCC Rcd at 10,687-88.

because we believe that, although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets. Thus, in adopting rules to govern the use of preferred carrier freeze mechanisms, we appropriately balance several factors, including consumer protection, the need to foster competition in all markets, and our desire to afford carriers flexibility in offering their customers innovative services such as preferred carrier freeze programs.[353] Moreover, in so doing we facilitate customer choice of preferred carrier selections and adopt and promote procedures that prevent fraud.

114. While we are confident that our carrier change verification rules, as modified in this Order, will provide considerable protection for consumers against unauthorized carrier changes, we recognize that many consumers wish to utilize preferred carrier freezes as an additional level of protection against slamming.354 As noted in the Further Notice and Order, a carrier freeze prevents a change in a subscriber's preferred carrier selection until the subscriber gives the carrier from whom the freeze was requested his or her written or oral consent.355 The record demonstrates that LECs increasingly have made available preferred carrier freezes to their customers as a means of preventing unauthorized conversion of carrier selections.356 The Commission, in the past, has supported the use of preferred carrier freezes as a means of ensuring that a subscriber's preferred carrier selection is not changed without his or her consent.357 Indeed, the majority of commenters in this proceeding assert that the use of preferred carrier freezes can reduce slamming by giving customers greater control over their

353 *See, e.g.*, Ohio Commission Comments at 12.

354 *See, e.g.*, NYSDPS Comments at 8-9; Ameritech Petition Comments at 8 (noting that number of Ameritech Illinois customers utilizing freezes increased from 35,000 to 200,000 between 1993 and 1995); SNET Reply Comments at 4.

355 *See Further Notice and Order*, 12 FCC Rcd at 10,688.

356 *See, e.g.*, Bell Atlantic Comments at 4 ("Bell Atlantic began offering PC freezes in response to its subscriber's demands for protection from slamming."); SNET Comments at 6-7. It appears, based on the record, that particular PC freeze administration practices can vary widely between carriers (*e.g.*, some carriers require written consent to lift a freeze while others require oral consent to lift a freeze). *See, e.g.*, GTE Comments at 13 (stating that GTE requires customers to complete and return special form before freeze is lifted); Ameritech Comments at 21 (stating that Ameritech offers 24 hour telephone line for customers to lift freeze).

357 *See, e.g.*, Federal Communications Commission, Common Carrier Scorecard (Fall 1996); *Policy and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Report and Order, 10 FCC Rcd 9560, 9574, n.58 (1995) (*1995 Report and Order*).

accounts.[358] Our experience, thus far, has demonstrated that preventing unauthorized carrier changes enhances competition by fostering consumer confidence that they control their choice of service providers. Thus, we believe that it is reasonable for carriers to offer, at their discretion, preferred carrier freeze mechanisms that will enable subscribers to gain greater control over their carrier selection.

115. In the Further Notice and Order, however, we stated that preferred carrier freezes may have the effect of limiting competition among carriers.[359] We share commenters' concerns that in some instances preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner.[360] Indeed, we note that a number of state commissions have determined,[361] and certain LECs concede,[362] that unregulated preferred carrier freezes are susceptible to such abuses. By definition, preferred carrier freezes create an additional step (namely, that subscribers contact directly the LEC that administers the preferred carrier freeze program) that customers must take before they are able to obtain a change in their carrier selection.[363] Where customers fail to take the additional step of lifting a preferred carrier freeze, their otherwise valid attempts to effectuate a change in carrier selection will be frustrated. Observing this process, some commenters argue that certain preferred carrier freeze programs are so onerous as to create an unreasonable hurdle for subscribers and submitting carriers seeking to process a carrier change.[364] Other commenters,

---

358 *See, e.g.*, NAAG Comments at 11; NCL Comments at 9; Texas Commission Comments at 4; Ameritech Comments at 21; GTE Reply Comments at 14; AT&T Comments at 18.

359 *See Further Notice and Order*, 12 FCC Rcd at 10,688.

360 *See, e.g.*, MCI Petition at 2-8; CompTel Comments at 8 ("In fact, the incumbent LEC's strategic use of PC-freezes belies any claim that they are using PC-freezes to protect consumers from slamming."); PaOCA at 7; RCN Reply Comments at 7-8.

361 *See, e.g.*, Michigan Public Service Commission, *Sprint Communications Company, L.P. v. Ameritech Michigan*, Case No. U-11038 (Aug. 1, 1996); Public Utilities Commission of Ohio, *Complaint of Sprint Communications Company, L.P. v. Ameritech Ohio*, Case No. 96-142-TP-CSS (Feb. 20, 1997); New Jersey Board of Public Utilities, *Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis*, Docket No. TX94090388 (June 3, 1997). *Cf.* California Public Utilities Commission, *Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision 97-04-083 (Apr. 23, 1997). *See also* North Carolina Commission Comments at 4; NAAG Comments at 11.

362 *See, e.g.*, Ameritech Reply Comments at 9; USTA Comments at 7 ("USTA agrees that PC freezes do have the ability to hinder competition if the Commission's rules permit improper use of them.").

363 *See Further Notice and Order*, 12 FCC Rcd at 10,688.

primarily interexchange carriers, suggest that LECs are using deceptive preferred carrier freeze solicitation practices to "lock up" consumers, without their understanding, as part of an effort to stifle competition in their markets.365

116. Particularly given the market structure changes contemplated in the 1996 Act,366 we are persuaded that incentives for unreasonable preferred carrier freeze practices exist. With the removal of legal and regulatory barriers to entry, carriers are now or soon will be able to enter each other's markets and provide various services in competition with one another.367 Incumbent LECs have, or will have in the foreseeable future, authorization to compete in the market for interLATA services. Similarly, incumbent LECs are preparing to face or are facing competition in the local exchange and intraLATA toll markets. Given these changes in market structure, incumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier.368 Despite these market changes, it appears that, at this time, facilities-based LECs -- most of which are incumbent LECs -- are uniquely situated to administer preferred carrier freeze programs. Thus, other carriers are dependent on the LECs to offer preferred carrier freeze services to their customers.

117. We conclude, contrary to the assertions of Bell Atlantic, that we have authority under section 258 to address concerns about anticompetitive preferred carrier freeze practices for intrastate, as well as interstate, services.369 Congress, in section 258 of the Act, has granted this Commission authority to adopt verification rules applicable to both submission and execution of changes in a subscriber's selection of a provider of

---

364 *See, e.g.*, Worldcom Petition Comments at 5; MCI Comments at 11; LCI Reply Comments at 8; *see also* NAAG Comments at 11.

365 *See, e.g.*, Sprint Petition Comments at 7 (citing examples of Ameritech practices in Illinois and Michigan); TRA Comments at 23; *see also* Ohio Commission Comments at 10-12.

366 *See* Joint Explanatory Statement (stating that the principal goal of the 1996 Act is to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

367 *See, e.g.*, 47 U.S.C. §§ 251-252, 271.

368 *See, e.g.*, MCI Comments at 18; Worldcom Comments at 9-10; Sprint Petition Comments at 5 ("In the past, most LECs did not actively promote PIC freezes . . . . "); TRA Comments at 18; *cf.* TOPC Reply Comments at 5.

369 Bell Atlantic and NYNEX Petition Comments at 1, n.1 ("The Commission has no jurisdiction to regulate PIC freezes or other LEC practices regarding intrastate services . . . .").

local exchange or telephone toll services.370 Preferred carrier freezes directly impact the verification procedures which Congress instructed the Commission to adopt because they require subscribers to take additional steps beyond those described in the Commission's verification rules to effectuate a carrier change. Moreover, where a preferred carrier freeze is in place, a submitting carrier that complies with our verification rules may find that its otherwise valid carrier change order is rejected by the LEC administering the freeze program. Since preferred carrier freeze mechanisms can essentially frustrate the Commission's statutorily authorized procedures for effectuating carrier changes, we conclude that the Commission has authority to set standards for the use of preferred carrier freeze mechanisms.

118. Based on this authority, we prescribe rules to ensure the fair and efficient use of preferred carrier freezes for intrastate and interstate services to protect customer choice and, correspondingly, to promote competition. Specifically, in the following sections, we adopt rules that apply, on a going-forward basis, to all carriers and that provide for the nondiscriminatory solicitation, implementation, and lifting of preferred carrier freezes.

3. Nondiscrimination and Application of Rules to All Local Exchange Carriers

119. We conclude, and codify in our rules implementing section 258 of the Act, that preferred carrier freezes should be implemented on a nondiscriminatory basis so that LECs do not use freezes as a tool to gain an unreasonable competitive advantage. Given that LECs are uniquely positioned to offer preferred carrier freezes, as described above, we believe that a nondiscrimination requirement is necessary to prevent unreasonable practices, such as denying freezes to the customers of their competitors. Accordingly, local exchange carriers must make available any preferred carrier freeze mechanism to all subscribers, under the same terms and conditions, regardless of the subscribers' carrier selection.371 We note that a number of LECs, including Ameritech and GTE, indicate that they already offer preferred carrier freezes to customers on a nondiscriminatory basis.372 Similarly, we state our expectation that LECs should not be able to impose discriminatory delays when lifting freezes.373 Since the Commission has long

370 47 U.S.C. § 258. *See supra* discussion on Application of the Verification Rules to the Local Market. *See also* Sprint Petition Reply Comments at 4.

371 *See*, Appendix A, § 64.1190(b). *See also*, *e.g.*, MCI Petition at 9; TRA Petition Comments at 8; CompTel Petition Comments at 2; CompTel Comments at 9; TOPC Reply Comments at 5; Citizens Petition Comments at 5.

372 *See*, *e.g.*, Ameritech Reply Comments at 11; GTE Comments at 12 ("GTE treats all carriers, including affiliates, the same for PC-change freeze purposes.").

373 We concluded above that the nondiscrimination requirements of sections 202(a) and 251 prohibit

recognized that incumbent LECs may have the incentive to discriminate in the provision of service to their competitors,374 we believe that articulating this nondiscrimination requirement will ensure that the same level of protection is available to all subscribers.

120. At the same time, we conclude that our rules for preferred carrier freezes should apply to all local exchange carriers. We reject those proposals to place additional requirements on incumbent LECs, to the exclusion of competitive LECs.375 Where a competitive LEC offers a preferred carrier freeze program, that competitive LEC must comply with our preferred carrier freeze rules, as set out in this Order. This policy is appropriate because we expect that a competitive LEC may face the same incentives to discriminate in the provision of preferred carrier freeze service to the customers of its competitors. In addition, subscribers of competitive LECs have the same right to expect that preferred carrier freeze programs will be nondiscriminatory and not deceptive or misleading, as do subscribers of incumbent LECs.

4. Solicitation and Implementation of Preferred Carrier Freezes

121. We adopt minimum standards to govern the solicitation and implementation of preferred carrier freezes in order to deter anticompetitive application of freeze practices and to ensure that consumers are able to make more informed decisions on whether to utilize a freeze. We share concerns of some commenters that certain carriers may solicit preferred carrier freezes in a manner that is unreasonable under the Act.376 The record indicates the potential for customer confusion. It appears that many consumers are unclear about whether preferred carrier freezes are being placed on their carrier selections and about which services or carriers are subject to these freezes.377 We find that the most effective way to ensure that preferred carrier freezes are used to protect consumers, rather than as a barrier to competition, is to ensure that

executing carriers from imposing discriminatory delays on their competitors when executing preferred carrier changes. *See supra* discussion on Timeframe for Execution of Carrier Changes. We believe that sections 202(a) and 251 may also restrict incumbent LECs' ability to use preferred carrier freezes for anticompetitive conduct.

374 *See, e.g., Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489, CC Docket No. 96-149 (rel. Dec. 24, 1996) ("*Non-Accounting Safeguards Order*").

375 *See, e.g.*, AT&T Petition Comments at 6; CompTel Petition Comments at 6.

376 *See, e.g.*, AT&T Petition Comments at 4-5; Sprint Petition Comments at 7; TRA Comments at 23.

377 *See, e.g.*, MCI Petition at 4, n.3; NAAG Comments at 12.

subscribers fully understand the nature of the freeze, including how to remove a freeze if they chose to employ one. We thus conclude that, in order to be a just and reasonable practice, any solicitation and other carrier-provided information concerning a preferred carrier freeze program should be clear and not misleading.378 Moreover, we adopt the tentative conclusion, as set forth in the Further Notice and Order, that any solicitation for preferred carrier freezes should provide certain basic explanatory information to subscribers about the nature of the preferred carrier freeze.379 Our decision to adopt rules governing the solicitation of preferred carrier freezes is supported by the vast majority of commenters, including state commissions and a number of incumbent LECs.380

122. We specifically decide that, at a minimum, carriers soliciting preferred carrier freezes must provide: 1) an explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a preferred carrier freeze; 2) a description of the specific procedures necessary to lift a preferred carrier freeze and an explanation that these steps are in addition to the Commission's regular verification rules for changing subscribers' carrier selections and that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and 3) an explanation of any charges associated with the preferred carrier freeze service.381 We decline, at this time, to mandate specific language to describe preferred carrier freezes because we believe that our rules will provide carriers with sufficient guidance to formulate scripts that inform customers about preferred carrier freezes in a neutral manner while preserving carrier flexibility in the message.382

123. We also conclude that preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services subject to a freeze, i.e., between local, intraLATA toll, interLATA toll, and international toll services.383 This rule will address concerns raised by commenters, including MCI and

---

378 *See also* 47 U.S.C. § 201(b).

379 *See Further Notice and Order*, 12 FCC Rcd at 10688.

380 *See, e.g.*, NYSCPB Reply Comments at 9 ("Commission properly . . . proposed rules that would limit such promotional materials."); NAAG at 12; Ameritech Reply Comments at 10; CompTel Comments at 9.

381 *See* Appendix A, § 64.1190(d)(1).

382 *See* MCI Comments at 17 ("Commission should consider requiring the use of standard language . . ."); NYSCPB Reply Comments at 9; Excel Reply Comments at 4.

383 *See* Appendix A, § 64.1190(c).

NAAG, that consumers may experience confusion about the differences between telecommunications services when employing freezes.384 It will also serve to prevent unscrupulous carriers from placing freezes on all of a subscriber's services when the subscriber only intended to authorize a freeze for a particular service or services.385 We thus conclude that "account level" freezes are unacceptable and that, instead, carriers must explain clearly the difference in services and obtain separate authorization for each service for which a preferred carrier freeze is requested.386 We note that a broad range of commenters, including many incumbent LECs, agree that customers should have the ability to place individual freezes on their interLATA, intraLATA toll, and local services.387 While some members of the public may still be unclear about the distinctions between different telecommunications services, particularly the difference between intraLATA toll and interLATA toll services, we expect that carriers can help customers to develop a better understanding of these services.

124. We decline those suggestions that we prohibit LECs from taking affirmative steps to make consumers aware of preferred carrier freezes because we believe that preferred carrier freezes are a useful tool in preventing slamming. Nor do we draw distinctions between "solicitation" and "educational materials" that some commenters urge us to adopt.388 We instead believe that the standards adopted herein will provide sufficient guidance for consumers. At the same time, we decline the suggestions of those parties who would have us require LECs affirmatively to distribute literature describing their preferred carrier freeze programs.389 Should states wish to adopt such requirements, we believe that it is within their purview to do so.

125. We adopt our proposal to extend our carrier change verification procedures to preferred carrier freeze solicitations and note that this proposal was supported by a wide range of carriers, state commissions, and consumer

---

384 MCI Comments at 14, n.15; NAAG Comments at 12. *See also* U S WEST Reply Comments at 24, n.74; TRA Comments at 25-26.

385 *See, e.g.*, Ameritech Petition Comments at 14; AT&T Petition Reply Comments at 7.

386 *See* Appendix A, § 64.1190(c).

387 *See, e.g.*, USTA Comments at 7; AT&T Petition Reply at 7; Puerto Rico Telephone Company Petition Reply at 4; LCI Reply Comments at 9.

388 *See, e.g.*, CBT Comments at 8.

389 *See, e.g.*, TOPC Reply Comments at 5; OCC Reply Comments at 4; CBT Comments at 9. We note that some LECs do not affirmatively market their preferred carrier freeze programs. *See, e.g.*, SBC Comments at 8, 10.

organizations.[390] By requiring LECs that administer preferred carrier freeze programs to verify a subscriber's request to place a freeze, we expect to reduce customer confusion about preferred carrier freezes and to prevent fraud in their implementation. According to a number of commenters, customer confusion over preferred carrier freezes often results in valid carrier change orders being rejected by LECs.[391] In combination with our requirement that carriers obtain separate authorization for each telecommunications service subject to the freeze, these verification procedures will further ensure that subscribers understand which services will be subject to a preferred carrier freeze.[392] Requiring LECs that offer preferred carrier freezes to comply with the Commission's verification rules will also minimize the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of subscribers.[393] We find such a practice to be unreasonable because it frustrates consumers' choice in carriers by making it more difficult for the consumer to switch carriers.

126. Our verification rules are designed to confirm a subscriber's wishes while imposing the minimum necessary burden on carriers. We agree with BellSouth that applying the Commission's verification rules to preferred carrier freezes will enable subscribers to obtain preferred carrier freeze protection with a minimum of effort.[394] By adopting the same verification procedures for both carrier changes and preferred carrier freezes, we expect that the process of implementing preferred carrier freezes will be less confusing for subscribers and administratively more efficient for carriers. We reject other commenter proposals, such as AT&T's proposal to require that LECs confirm preferred carrier freezes in writing.[395] We think that our verification rules will be

---

390 *See* Appendix A, § 64.1190(d)(2). *See Further Notice and Order*, 12 FCC Rcd at 10,687-89. *See, e.g.*, Worldcom Comments at 9; Intermedia Comments at 6; BellSouth Comments at 4; Texas Commission Comments at 4; PaOCA Comments at 7.

391 *See, e.g.*, Sprint Petition Comments at 8 (rejection of the preferred carrier change order "may occur weeks after such customers have chosen to switch . . . "); CompTel Petition Comments at 4; MCI Comments at 14-15.

392 We note that, where a subscriber seeks to place a freeze on more than one of his or her services, the separate authorization and verification may be received and conducted during the same telephone conversation or may be obtained in separate statements on the same written request for a freeze.

393 *See* AT&T Comments at 18 ("extending the verification rules to the freeze mechanism may help to curb competitive abuse of that procedure . . ."); BellSouth Comments at 4 (rules will "provide some protection against unscrupulous carriers that attempt to limit competition by imposing PC freezes without the subscriber's authorization").

394 *See* BellSouth Comments at 4.

395 AT&T Comments at 19, n.23.

adequate to ensure that subscribers' choices, whether for carrier changes or preferred carrier freezes, are honored.

5. Procedures for Lifting Preferred Carrier Freezes

127. We conclude that LECs offering preferred carrier freeze programs must make available reasonable procedures for lifting preferred carrier freezes. Based on the record before us, we are concerned that some procedures for lifting preferred carrier freezes may place an unreasonable burden on subscribers who wish to change their carrier selections.396 In addition, and as noted above, we are concerned that consumers are not being fully informed about how freezes work, and therefore often fail to appreciate the significance of implementing a freeze at the time they make the choice. This concern is particularly acute in markets where competition has not yet fully developed so that consumers are aware of the choices they have or will have in the future. We conclude that adopting baseline standards for the lifting of preferred carrier freezes will appropriately balance the interests of Congress in opening markets to competition by protecting consumer choice, preventing anticompetitive practices, and providing consumers a potentially valuable tool to protect themselves from fraud. Thus, carriers must offer subscribers a simple, easily understandable, but secure, way of lifting preferred carrier freezes in a timely manner.397

128. With these concerns for promoting customer choice in mind, we conclude that a LEC administering a preferred carrier freeze program must accept the subscriber's written and signed authorization stating an intent to lift a preferred carrier freeze.398 Such written authorization -- like the LOAs authorized for use in carrier changes and to place a preferred carrier freeze -- should state the subscriber's billing name and address and each telephone number to be affected. In addition, the written authorization should state the subscriber's intent to lift the preferred carrier freeze for the particular service in question. We think that this procedure is clearly consistent with the purpose of the preferred carrier freeze because it permits the subscriber to notify the LEC directly of her or his intention to lift a preferred carrier freeze.399 By requiring LECs to accept such authorization, we ensure that subscribers will have a simple and reliable way of lifting preferred carrier freezes, and thus making a carrier change.

---

396 *See, e.g.,* MCI Comments at 15-17; CompTel Petition Comments at 2.

397 *See, e.g.,* IXC Long Distance Reply Comments at 5; Ameritech Reply Comments at 10; MCI Petition at 9.

398 *See* Appendix A, § 64.1190(e)(1).

399 *See, e.g.,* U S WEST Reply Comments at 25; USTA Reply Comments at 5; TNRA Comments at 3.

129. We similarly conclude that LECs offering preferred carrier freeze programs must accept oral authorization from the customer to remove a freeze and must permit submitting carriers to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze.400 In this regard, we agree, for example, with the Texas Office of Public Utility Counsel that three-way calling is an effective means of having a preferred carrier freeze lifted during an initial conversation between a subscriber and a submitting carrier.401 Specifically, three-way calling allows a submitting carrier to conduct a three-way conference call with the LEC administering the freeze program while the consumer is still on the line, e.g., during the initial telemarketing session, so that the consumer can personally request that a particular freeze be lifted. We are not persuaded by certain LECs' claims that three-way calling is unduly burdensome or raises the risk of fraud.402 We do not anticipate that the volume of subscribers seeking to lift their preferred carrier freezes will be overly burdensome for these carriers' customer support staff. Further, we expect that LECs administering preferred carrier freeze programs will be able to recover as part of the carrier change charge the cost of making such three-way calling available.403 We also believe that three-way calling will effectively prevent fraud because a three-way call establishes direct contact between the LEC and the subscriber. We expect that the LEC administering the preferred carrier freeze program will have the opportunity to ask reasonable questions designed to determine the identity of the subscriber during an oral authorization, such as a three-way call, to lift a freeze.404 Finally, the three-way call procedure merely lifts the preferred carrier freeze. In addition, a submitting carrier must follow the Commission's verification rules before submitting a carrier change. For example, an interexchange carrier wishing to submit a carrier change for a customer with a preferred carrier freeze would comply with our verification rules for carrier changes, perhaps by using third-party verification, and then, if necessary, could perform a three-way call with the LEC administering the preferred carrier freeze program to lift the freeze -- all before submitting its carrier change order to the executing carrier.

---

[400] *See* Appendix A, § 64.1190(e)(2).

[401] TOPC Reply Comments at 5. *See also* AT&T Petition Comments at 7; Telco Comments at 8-9; Ohio Commission Comments at 11; Worldcom Comments at 10.

[402] *See, e.g.,* GTE Petition Comments at 5; Citizens Petition Reply at 5; Ameritech Petition Comments at 21.

[403] Moreover, we can revisit these conclusions if further experience indicates that these rules become unduly burdensome.

[404] *See* AT&T Petition Reply at 5, n.8.

130. We decline to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encourage parties to develop new means of accurately confirming a subscriber's identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes. Other methods should be secure, yet impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze.[405] Thus, we do not adopt IXC Long Distance's proposal to require that LECs give customers a unique password or personal identification number.[406] While some LECs may find such a proposal useful, we need not mandate its use, given our decision to adopt the procedures for lifting preferred carrier freezes described above.

131. We agree with Ameritech and those commenters who suggest that the essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze.[407] Because our carrier change rules allow carriers to submit carrier change requests directly to the LECs, the limitation on lifting preferred carrier freezes gives the freeze mechanism its protective effect. We disagree with MCI that third-party verification of a carrier change alone should be sufficient to lift a preferred carrier freeze.[408] Were we to allow third-party verification of a carrier change to override a preferred carrier freeze, subscribers would gain no additional protection from the implementation of a preferred carrier freeze. Since we believe that subscribers should have the choice to implement additional slamming protection in the form of preferred carrier freeze mechanisms, we do not adopt MCI's proposal.

132. We expect that, in three-way calls placed to lift a preferred carrier freeze, carriers administering freeze programs will ask those questions necessary to ascertain the identity of the caller and the caller's intention to lift her or his freeze, such as the caller's social security number or date of birth. Several commenters state that when subscribers contact certain LECs to lift their preferred carrier freezes, those LECs go further and attempt to retain customers by dissuading them from choosing another carrier as their preferred carrier selection.[409] Indeed, SNET states that there is no reason for incumbent

[405] *See, e.g.,* Ameritech Comments at 20-21 (discussing development of 24 hour voice response unit).

[406] IXC Long Distance Comments at 5.

[407] Ameritech Reply Comments at 14. *See also* NYSCPB Reply Comments at 10; U S WEST Reply Comments at 25.

[408] MCI Petition at 9. *See also* Midcom Petition Comments at 3; BCI Comments at 3.

[409] *See, e.g.,* CompTel Petition Comments at 4; Sprint Comments at 34; MCI Reply Comments at 10 (indicating that LECs engage in "win back" efforts even while participating in three-way calls). *But see* Bell Atlantic Reply Comments at 11, n.21.

LECs to treat the lifting of preferred carrier freezes "as ministerial and not as an opportunity to market the services of its affiliates."[410] We disagree with SNET and believe that, depending on the circumstances, such practices likely would violate our rule, discussed above, that carriers must offer and administer preferred carrier freezes on a nondiscriminatory basis. Indeed, we are aware of states that have made similar findings that a carrier that is asked to lift a freeze should not be permitted to attempt to change the subscriber's decision to change carriers.[411] In addition, such practices could also violate the "just and reasonable" provisions of section 201(b).[412] Much as in the context of executing carriers and carrier change requests, we think it is imperative to prevent anticompetitive conduct on the part of executing carriers and carriers that administer preferred carrier freeze programs.[413] Carriers that administer freeze programs otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the carrier's position as a provider of switched access services. Therefore, LECs that receive requests to lift a preferred carrier freeze must act in a neutral and nondiscriminatory manner. To the extent that carriers use the opportunity with the customer to advantage themselves competitively, for example, through overt marketing, such conduct likely would be viewed as unreasonable under our rules.[414]

6. Information about Subscribers with Preferred Carrier Freezes

133. We do not require LECs administering preferred carrier freeze programs to make subscriber freeze information available to other carriers because we expect that, particularly in light of our new preferred carrier freeze solicitation requirements, more subscribers should know whether or not there is a preferred carrier freeze in place on their carrier selection.[415] Given our requirement that LECs make available a three-way

---

[410] SNET Petition Reply Comments at 7.

[411] *See, e.g.*, Illinois Commerce Commission, *MCI Telecommunications Corp. et al. v. Illinois Bell Telephone Co.*, Order, Case Nos. 96-0075 and 96-0084 (rel. Apr. 3, 1996) ("[d]uring telephone calls for the purpose of changing the customer's intraMSA PIC to another carrier, Respondent should not attempt to retain the customer's account during the process"); Michigan Public Service Commission, *Sprint Communications Company, L.P. v. Ameritech Michigan*, Case No. U-11038 (Aug. 1, 1996) (concluding that "if a customer with [a preferred carrier freeze] calls to change providers, Ameritech Michigan shall not use that contact to try to persuade the customer not to change providers").

[412] 47 U.S.C. § 201(b).

[413] *See supra* discussion on Marketing Use of Carrier Change Information.

[414] *See* 47 U.S.C. §§ 201, 208.

[415] *See* MCI Petition at 8-9; IXC Long Distance Reply Comments at 5. We note that at least one incumbent LEC makes this information available already. BellSouth Reply Comments at 7; *cf.*

calling mechanism to lift preferred carrier freezes, if a subscriber is uncertain about whether a preferred carrier freeze has been imposed, the submitting carrier may use the three-way calling mechanism to confirm the presence of a freeze. Thus, we expect that carriers will not typically need to rely on such information to determine whether a freeze is in place.416 On the other hand, we see benefit to the consumer -- in terms of decreased confusion and inconvenience -- where carriers would be able to determine whether a freeze is in place before or during an initial contact with a consumer. As one alternative, we encourage LECs to consider whether preferred carrier freeze indicators might be a part of any operational support system that is made available to new providers of local telephone service.

7. When Subscribers Change LECs

134. Based on the record developed on this issue, we do not adopt the Commission's tentative conclusion that LECs would automatically establish existing preferred carrier freezes that were implemented with the prior LEC when a subscriber switches his or her provider of local service.417 Rather, we conclude that when a subscriber switches LECs, he or she should request the new LEC to implement any desired preferred carrier freezes, even if the subscriber previously had placed a freeze with the original LEC. We are persuaded by the substantial number of LEC commenters asserting that it would be technically difficult or impossible to transfer information about existing preferred carrier freezes from the original LEC to the new LEC.418 It is our understanding that these difficulties are accentuated because each LEC has different procedures for managing preferred carrier freeze mechanisms. Moreover, because our rules will allow carriers to have different means for lifting freezes, it will be important for subscribers to be informed of the new LECs' procedures before deciding whether to renew a freeze. In the absence of such a requirement, we expect that LECs will develop procedures to ensure that new subscribers are able to implement any desired preferred carrier freezes at the time of subscription, thus avoiding potential confusion for subscribers.

8. Preferred Carrier Freezes of Local and IntraLATA Services

Ameritech Reply Comments at 11-12.

416 If we find that substantial impediments to the timely identification and lifting of preferred carrier freezes exists in the future, we can revisit this issue.

417 *Further Notice and Order*, 12 FCC Rcd at 10,689. *See also* OCC Comments at 3; Worldcom Comments at 10.

418 *See, e.g.,* Ameritech Comments at 23; Bell Atlantic Comments at 5; MCI Comments at 17. *See also* Ohio Commission Comments at 12.

135. We decline the suggestion of a number of commenters that we prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange or intraLATA services until competition develops in a LEC's service area.419 In so doing, however, we recognize, as several commenters observe, that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be or newly open to competition.420 These commenters in essence argue that incumbent LECs seek to use preferred carrier freeze programs as a means to inhibit the ability or willingness of customers to switch to the services of new entrants. We share concerns about the use of preferred carrier freeze mechanisms for anticompetitive purposes. We concur with those commenters that assert that, where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced.421 Aggressive preferred carrier freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct.422 We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.

136. Despite our concerns about the possible anticompetitive aspects of permitting preferred carrier freezes of local exchange and intraLATA toll services in markets where there is little competition for these services, we believe that it is not necessary for the Commission to adopt a nationwide moratorium. Indeed, we remain convinced of the value of preferred carrier freezes as an anti-slamming tool. We do not wish to limit consumer access to this consumer protection device because we believe that promoting consumer confidence is central to the purposes of section 258 of the Act. As with most of the other rules we adopt today, the uniform application of the preferred carrier freeze rules to all carriers and services should heighten consumers' understanding of their rights. We note the strong support of those consumer advocates that state that the Commission should not delay the implementation of preferred carrier freezes.423 We

---

419 *See, e.g.*, MCI Petition Reply at 3; Intermedia Comments at 7; LCI Comments at 1; Telco Comments at 7; Excel Reply Comments at 2-3.

420 *See, e.g.*, NAAG Comments at 11; PaOCA Comments at 7; Sprint Comments at 34.

421 *See, e.g.*, MCI Comments at 13-14; Ohio Commission Comments at 11-12; *cf.* USTA Reply Comments at 7. *Cf.* BellSouth Comments at 12, n.25 (stating that it does not offer preferred carrier freezes for choice of local service providers whether the provider is BellSouth or a reseller CLEC).

422 *See, e.g.*, Ohio Commission Comments at 11-12; LCI Comments at 2-3; Intermedia Comments at 6; TRA Petition Comments at 2-4 (citing examples from MCI Petition).

423 *See, e.g.*, OCC Reply Comments at 6 ("Customers would thus not be able to protect themselves

also expect that our rules governing the solicitation and implementation of preferred carrier freezes, as adopted herein, will reduce customer confusion and thereby reduce the likelihood that LECs will be able to shield their customers from competition.

137. We make clear, however, that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anticompetitive conduct. We note that a number of states have imposed some form of moratorium on the implementation of preferred carrier freezes in their nascent markets for local exchange and intraLATA toll services.424 We find that states -- based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdictions -- may conclude that the negative impact of such freezes on the development of competition in local and intraLATA toll markets may outweigh the benefit to consumers.

9. Limitation on Freeze Mechanisms for Resold Services

138. A number of commenters indicate that preferred carrier freeze mechanisms will not prevent all unauthorized carrier changes.425 Specifically, and as described above, when a subscriber changes to a new carrier that has the same CIC as the original carrier -- such as a change from a facilities-based IXC to a reseller of that facilities-based IXC -- the execution of the change order is performed by the facilities-based IXC, not the subscriber's LEC.426 Where such a change is made without the subscriber's authorization, it is referred to as a "soft slam." In a soft slam, the LEC does not make any changes in its system because it will continue to send interexchange calls from that subscriber to the same facilities-based IXC, using the same CIC. Since the soft-slam execution is not performed by the LEC and the LEC may not even be notified of the change, the LEC's preferred carrier freeze mechanism would not prevent such a change. We seek comment in the attached Further Notice of Proposed Rulemaking about

---

against slamming for one year under AT&T's proposal."); NYSDPS Comments at 8-9; NCL Comments at 8.

424 *See, e.g.*, New Jersey Board of Public Utilities, *Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis*, Docket No. TX94090388 (June 3, 1997); California Public Utilities Commission, *Alternative Regulatory Frameworks for Local Exchange Carriers*, Decision 97-04-083 (Apr. 23, 1997); Tex. Admin. Code Title 16, § 23.103 (prohibiting freezes for intraLATA toll services until subscribers receive notice of equal access).

425 *See, e.g.*, NYSDPS at 9.; Ameritech Petition Comments at 17; U S WEST Reply Comments at 11, n.28.

426 *See supra* discussion on Definition of "Submitting" and "Executing" Carriers.

issues concerning resellers and CICs, including alternative methods for preventing switchless resellers from circumventing a subscriber's preferred carrier freeze protection through soft slams.427 We encourage commenters to address these issues in detail.

427 *See infra* discussion in Further Notice of Proposed Rulemaking, Resellers and CICs.

APPENDIX A

RULES AMENDED

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The title of Part 64, Subpart K, is amended to read as follows:

Subpart K - Changes in Preferred Telecommunications Service Providers

2. Part 64, Subpart K, is further amended by redesignating section 64.1100 as section 64.1150, and modifying new section 64.1150 to read as follows:

§64.1150 Verification of Orders for Telecommunications Service

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

(a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of section 64.1160; or

(b) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(d) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

3. Part 64, Subpart K, is further amended by redesignating section 64.1150 as section 64.1160, and modifying new section 64.1160 to read as follows:

§64.1160 Letter of Agency Form and Content

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

4. Part 64, Subpart K, is further amended by adding new sections 64.1100, 64.1170, 64.1180, and 64.1190 to read as follows:

§ 64.1100 Changes in Subscriber Carrier Selections

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining: (A) authorization from the subscriber, and (B) verification of that authorization in accordance with the procedures prescribed in section 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this Subpart shall be defined as compliance with subsections (a) and (b) of this section, as well with section 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this Subpart shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service *(e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Subpart.

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in section 64.1170 of this Subpart. The remedies provided in this Subpart are in addition to any other remedies available by law.

(d) Subscriber Liability for Charges. Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this Subpart is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the

subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in section 64.1170 of this Subpart.

(3) If the subscriber has been absolved of liability as prescribed by this subsection, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) Definitions. For the purposes of this Subpart, the following definitions are applicable:

(1) Submitting carrier: a submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) Executing carrier: an executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) Authorized carrier: an authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made

without authorization verified in accordance with the verification procedures specified in this Subpart.

§ 64.1170 Reimbursement Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

(1) Proof of verification of the subscriber's authorization to change carriers; or

(2) The following:

(A) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(B) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(C) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) Subscriber Refunds or Credits. Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(A), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) Restoration of Premium Programs. Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

§ 64.1180 Investigation Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with section 64.1100(d) of this Subpart.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this Subpart.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

> (1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.
>
> (2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

§ 64.1190 Preferred Carrier Freezes

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of section 64.1190(d)(3); or

(B) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with section 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (*e.g.*, for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

Exhibit D

5. EXCHANGE SERVICES

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE

5.2.11 COMPETITIVE RESPONSE

A. Residence Competitive Response Program

1. Description

The Residence Competitive Response Program is an offering to residence customers who have left Qwest for another telecommunications provider, for their local exchange service and/or their intraLATA toll service, and are now returning.

Qwest will offer incentives to customers who return for their telecommunications needs.

2. Terms and Conditions

a. This competitive response offering will only be offered to customers returning to Qwest from a competing telecommunications provider.

b. Residence customers' return to Qwest intraLATA toll is regarded separately from their return to Qwest local exchange service.

c. Residence customers will receive the waivers only on their initial return to Qwest for their local exchange service.

d. Periods and provisions of this offer will be determined by Qwest.

e. Qwest reserves the right to discontinue this offer, without further proceedings or approvals, upon 14 days notice to the Arizona Corporation Commission.

3. Rates and Charges

a. Customers returning to Qwest for their local exchange service will receive either a waiver of the current nonrecurring charge, up to two months of recurring rates or both, on selected services determined by the Company. Amounts and types of the waivers will vary. In addition, customers may be eligible for waivers of intraLATA MTS charges.

b. Total local exchange service charges waived will not exceed $100.00 per customer location.

c. Customers returning to Qwest for intraLATA toll service will receive waivers not to exceed $50.00 per customer per year.

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE
5.2.11 COMPETITIVE RESPONSE (Cont'd)

B. Business Competitive Response Program

1. Description

The Business Competitive Response Program is an offering to business customers who have terminated or canceled all or part of their Qwest services and established service with another telecommunications provider, and such business customers are reestablishing some material part of their services with Qwest.

In accordance with the terms of this Business Competitive Response Program, Qwest may offer incentive(s) to such returning business customers.

2. Terms and Conditions

a. The Business Competitive Response Program may be offered only to business customers returning to Qwest from a competing telecommunications provider.

b. The Company may offer returning business customers incentives in the form of a credit on the business customer's bill after the business customer actually reestablishes the agreed upon service with Qwest.

c. Business customers may not obtain the incentive(s) or any credits after their first or initial return to Qwest for which incentive credit(s) have been provided.

d. Business customers may receive the incentive credit(s) only in connection with services that are reestablished or established upon the initial return to Qwest.

e. Business customers' return to Qwest intraLATA toll is regarded separately from their return to Qwest local exchange service.

f. On contractual services, business customers are required to sign a contract in order to receive a waiver.

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE
5.2.11 COMPETITIVE RESPONSE

B.2. (Cont'd)

g. Business customers who receive the Competitive Response Program credit(s) are required to remain with Qwest for a minimum of one year or be billed all of the nonrecurring charge(s) and monthly rate(s) waived.

h. Qwest reserves the right to discontinue this offer, without further proceedings or approvals, upon 14 days notice to the Arizona Corporation Commission.

i. Returning business customers are required to have a satisfactory credit rating with Qwest in accordance with 2.3.3.

j. Qwest shall use reasonable business efforts so that similarly situated customers are offered similar incentive credits in similar circumstances.

k. The Business Competitive Response Program is a competitive response only and is not available for resale.

3. Rates and Charges

a. Returning business customers receive a maximum of either a waiver of the current nonrecurring charge(s), or up to two months of the current monthly rate(s), or both, on selected services as determined by Qwest. In addition, returning business customers may be provided waivers of intraLATA MTS charges.

b. Incentive amounts are calculated on the first month's nonrecurring charge(s) and monthly rate(s). The total credit amount will not exceed the total nonrecurring charge(s) plus two months service of the monthly rate(s).

5. EXCHANGE SERVICES

5.4 PREMIUM EXCHANGE SERVICES

5.4.7 *INTRACALL* SERVICE

A. Description

The *INTRACALL* Service allows an individual access line, non-complex residence or business customer to use the line as an intercom system. This feature is activated when the customer dials their own number from any station on the line, receives a busy signal and hangs up. Upon hanging up, all stations on the line will ring. Two or more stations may speak over the intercom line.

B. Terms and Conditions

1. If the customer has Call Waiting, the feature will be deactivated for the duration of the intercom call.
2. If the customer has Call Forwarding, and the feature is activated, all *INTRACALL* calls will also be forwarded.
3. This service is furnished only in CO areas where adequate and suitable facilities are available.
4. *INTRACALL* Service is not offered with Hunting Service or Combination Service arrangements 2 and 3.

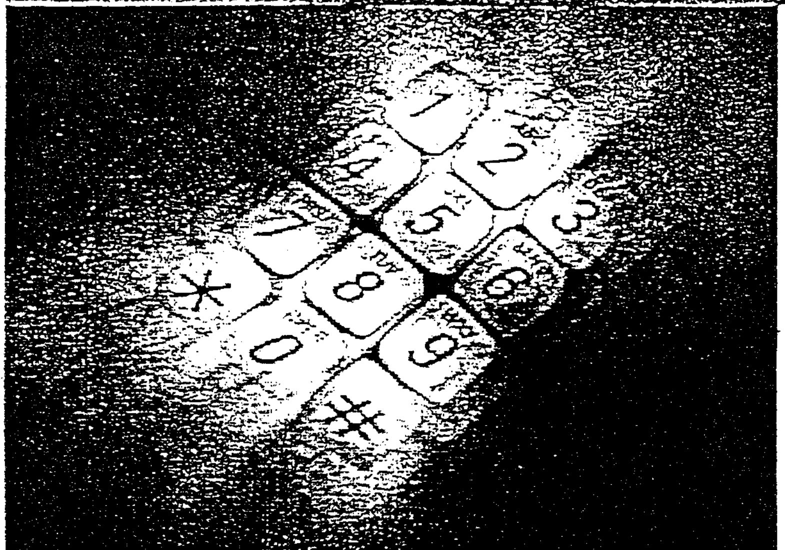
C. Rates and Charges

These rates are in addition to the basic rates for the service with which it is associated. (C)

	USOC	MONTHLY RATE	
• *INTRACALL* Service			
- Business, per line	E1N	$1.50	(C)
- Residence, per line	E1N	2.00	(C)

Exhibit E

PROTECT YOUR LOCAL (DIAL TONE) PHONE SERVICE



Communications is an important part of your everyday activities. That's why it's important for your service to be protected from slamming (switching of your phone service provider without your permission).

Get protection today from Qwest

Now you can protect your local (dial tone) service and prevent any company from changing your local service provider by placing a freeze on your telecommunications account – at no charge. You also have an option to freeze your local long distance and long distance service providers – at no charge.

(continued on back)

FREE!

It's quick and easy to get this FREE protection for your telephone service(s). Contact Qwest at:

Residential	1-800-339-0188
Business	1-800-996-2512
Large Business	1-800-549-5629
Federal Services	1-800-879-1023
Government & Education	1-866-221-6073

A freeze does not prohibit you from making changes to your services/provider(s) at any time, but you must contact us directly. You may remove a freeze at no charge by contacting Qwest directly with a verbal, written or electronically signed authorization.

If you have any questions or need additional information about this free protection, please contact us at the toll free number listed at the top of your Qwest telephone bill.

Once a freeze is effective, authorization to others, even in writing or verified by a third party, will not be enough to change the provider of that service. Local Service Freeze is not available in all states.

Qwest.

Exhibit F

Colorado Public Utilities Commission

March 28, 2000

Before Page, Gifford and Hix, commissioners.

*1 DECISION ON EXCEPTIONS

Mailed Date: March 28, 2000 Adopted Date: March 22, 2000

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions to Recommended Decision No. R99-1362. U S WEST Communications, Inc. ('USWC '), filed its exceptions on January 4, 2000, as did MCI WorldCom, Inc. ('MCI '), AT&T Communications of the Mountain States, Inc. ('AT&T'), and NextLink, LLC ('NextLink') jointly (collectively 'Complainants'). USWC responded to the Complainants' exceptions.

2. This case began as three similar but separate complaints about USWC's account activities in February 1999, during the implementation of Colorado intraLATA equal access. Without notice to their customers, the Commission, or their competitors, USWC expanded customers' interLATA Presubscribed Interexchange **Carrier** ('PIC' sometimes referenced as Preferred **Carrier** or PC) **freezes** to make USWC their 'chosen' intraLATA **carrier**. MCI complained first in March 1999. AT&T filed its complaint in April 1999, and NextLink filed in May 1999. The cases were consolidated into 99K-193T and set for hearing on June 4, 1999. The Administrative Law Judge ('ALJ') issued his Recommended Decision on December 15, 1999, and all parties timely filed exceptions.

3. Now being duly advised, we will grant USWC's exceptions and grant, in part, the joint exceptions of the Complainants.

B. Facts

1. For many years after the break-up of the Bell operating companies, only incumbent local exchange **carriers** could provide intraLATA service on a 1+ basis. Others could provide intraLATA service, but only on a more cumbersome dial-around basis. In the

mid-1990's, the Federal Communications Commission ('FCC') established a phased plan to allow all **carriers** to serve the intraLATA market on a 1+ basis to implement 'dialing parity.' All **carriers** would have equal access to provide 1+ intraLATA service.

2. PIC **freezes** came about as a response to the practice of 'slamming.' 'Slamming' involves the unauthorized switch of a toll customer between **carriers**. Absent a PIC **freeze,** a toll **carrier** or its agents by negligence, recklessness, or fraud-could **change** a customer's toll **carrier** by notifying the local exchange **carrier** ('LEC'). The PIC **freeze** eliminated the possibilities of slamming by requiring a customer's authorization before the LEC would **change** its PIC.

3. Before the implementation of dialing parity, a PIC **freeze** applied only to interLATA **carriers**. However, with the advent of dialing parity, a customer could place a **freeze** on inter-or intraLATA PIC.

4. Under the FCC dialing parity plan, dialing parity is being phased-in on a state-by-state basis over a period of years. The first USWC-region state commenced intraLATA equal access in 1996 with Colorado in 1999. With the first state in 1996, USWC established its internal PIC **freeze** policy at issue. USWC established an internal policy expanding any existing customer interLATA PIC **freeze,** without customer notice, to **freeze** that customer to USWC for intraLATA service when intraLATA service was opened to competition.

5. When dialing parity was scheduled for implementation in Minnesota, USWC advised the state utilities commission in advance of implementation of its policy. The Minnesota commission required USWC to provide advance notice to customers before implementing an intraLATA PIC **freeze** to USWC. During the dialing parity proceeding AT&T, among others, argued that the policy was anticompetitive.

6. The New Mexico commission responded similarly. Before dialing parity was implemented, USWC notified the commission of the policy, and the commission required advance notice to customers before any PIC **freeze.** Iowa took a different tack after being advised of USWC's intentions. Iowa made USWC wait for 120 days after the implementation of dialing parity before imposing the **freeze** on customers.

7. Dialing parity was scheduled in Colorado for February 8, 1999. Before implementation, many **carriers**, including USWC and AT&T, held cooperative workshops to make the transition easier. USWC never told the other **carriers** about its **freeze** policy. In reports to the Commission, USWC deleted references to the policy.

8. A notice to be provided to all customers came from the workshops. The notice purported to explain intraLATA equal access and the customer's coming rights to choose a **carrier** for intraLATA service. The notice, which USWC helped develop, was provided to all customers during December 1999, and January 2000. The notice included a list of intraLATA **carriers** and told customers that they had only to call the **carrier** of their choice at the number provided to choose an intraLATA **carrier**. No

mention was made of PIC **freezes** or USWC's policy which required that a customer contact USWC before a **change** could be made.

9. While customers were told they could choose their intraLATA **carriers**, it was not to remain a choice without cost. For the initial 120 days, any **change** in **carriers** was to be free. However, USWC intended to impose a $5.00 charge for **changes** made after the 120 days ('Switching Charge').

10. USWC froze approximately 207,000 accounts without notice when dialing parity was implemented on February 8, 1999. Concurrent with the changeover, many competitive **carriers** made a marketing push to recruit intraLATA customers. As customers selected specific **carriers**, the **carriers** notified USWC to make the appropriate PIC designations. Because of the unilateral **freezes** imposed by USWC, the system broke down for the 207,000 frozen accounts. U S WEST rejected the frozen accounts for PIC **changes**. USWC would notify the **carrier** requesting the **changes** seven to ten days after the initial PIC **change** request.

11. Generally, the rejected **carrier** (e.g., MCI, AT&T, NextLink) had to attempt to re-contact the customer. If the **carrier** was able to contact the customer, it had to explain why his intraLATA **carrier** was not the one he chose. And, the **carrier** had to explain what the customer had to do to establish his chosen intraLATA **carrier**. In some cases, the **carrier** was able to set up a three-way call including USWC and establish the customer's choice of **carrier**. However, the three-way call was an option that rarely worked because of the logistics and time involved. The evidence at hearing supported a finding that there were in excess of 16,000 customers who were blocked from their first intraLATA choice because of the PIC **freeze** policy. Many did not subsequently reaffirm their initial choices.

12. On May 6 and 7, 1999, approximately three months after USWC froze the 207,000 accounts, it provided notice to the affected customers. Notice was sent via postcards. Customers were advised that their accounts were frozen, and they could lift the **freeze** by calling a toll-free number. The postcard did not explain the difference between intraLATA and interLATA toll service, or tell the customers that their intraLATA accounts had been frozen to USWC. Ex. 13.

13. USWC's actions contradicted its position statements in a FCC rulemaking docket. In CC Docket No. 94-129, Order FCC 98-334, the FCC established slamming rules and included, inter alia, PIC **freeze** rules. The rules were adopted on December 17, 1998, over a month before USWC froze the Colorado accounts. However, the rules were not effective until April 2000.

14. In the rulemaking process, USWC filed comments stating:

US WEST agrees with those commentators who argue that [preferred **carrier**] protection should be controlled by the end user customer and solely by that customer ... US WEST opposes the carry-over of PC protections when a customer moves from one

carrier to another, both on practical and sound-commercial- practice grounds... Ex. No. 27, pp. 25-26. These comments are at odds with USWC's actions here. The actions violated the adopted rules.

15. While aimed primarily at 'slamming,' the rules also adopted standards governing the implementation of preferred **carrier freezes.** Order FCC 98-334 at ¶ 111. The order noted that **freezes** could be used as a barrier to competition. In discussing the need for **freeze** procedures and rules, the order stated:

[The rule] will also serve to prevent unscrupulous **carriers** from placing **freezes** on all of a subscriber's services when the subscriber only intended to authorize a **freeze** for a particular service or services. We thus conclude that 'account level' **freezes** are unacceptable and that, instead, **carriers** must explain clearly the difference in services and obtain separate authorization for each service for which a preferred **carrier freeze** is requested... .
*2 Id. at ¶ 113. The order went on to say that the **freeze** rules and procedures would:
Minimize the risk that unscrupulous **carriers** might attempt to impose preferred **carrier freezes** without the consent of subscribers. We find such a practice to be unreasonable because it frustrates consumers' choice in **carriers** by making it more difficult for the consumer to switch **carriers**.
Id. at ¶ 115. This order was released December 23, 1998, over a month before USWC implemented the account-level **freezes** at issue here.

C. Discussion

1. The ALJ found that USWC's actions violated § 40-3-103, C.R.S., as well as 4 Code of Colorado Regulations 723-25 ('Rule 25'). Section 40-3-103, C.R.S., requires **carriers** to file 'all rules, regulations...which in any manner affect or relate to rates, tolls,...classifications, or service.' Rule 25 makes clear that the customer must choose a **carrier**; the **carrier** cannot choose the customer. USWC did not contest these findings.

2. In his Recommended Decision, the ALJ ordered USWC to cease the practice immediately. He ordered refunds of any assessed Switching Charges and extended the period during which customers could **change** intraLATA **carriers** without Switching Charges. USWC did not contest these remedies other than to ask for clarification that the Switching Charges refunds apply only to those customers whose intraLATA **carrier** choice was improperly frozen to USWC.

3. The complaining parties jointly ask for four modifications and additions: that the Commission find that USWC's actions were anticompetitive; that the Commission assess damages against USWC analogous to § 40-15-112, C.R.S.; that the Commission institute judicial action to impose fines against USWC; and that the Commission clarify that the recipient of any Switching Charges refunds be the payor rather than simply the customer.

D. Switching Charges

Because no party questions the propriety of the refunds, we need address only to whom the refunds should be paid. USWC is concerned that the refunds may have to be made to everyone without regard to the PIC **freezes.** That would be inconsistent with the harm done. Only USWC customers with interLATA PIC **freezes** whose accounts were frozen to USWC for intraLATA service at the implementation of equal access are eligible for switching charge refunds. The refunds should be made to the person who paid the charge. If the customer paid the charge, he or she should get the refund. If another **carrier** paid the charge for the customer, then the **carrier** should get the refund. We will grant USWC's exceptions and grant the Complainants' to the extent they ask that refunds be to the payor of the Switching Charges.

E. Anticompetitive Actions

1. The Complainants next ask that we make a finding that the actions of USWC were anticompetitive. They point out that USWC had notice that the Complainants believed the PIC **freeze** extensions were anticompetitive, that the extensions deprived customers of choice, and that it damaged the Complainants. In response, USWC argues that its actions were not 'legally cognizable anti- competitive conduct' and that competition did not motivate its actions. We agree that USWC's actions were anticompetitive.

2. USWC used its position as the sole 1+ intraLATA provider in its extensive service area to inhibit the entry of competitors into the intraLATA market and tangibly damaged the entering competitors. It restricted competitive access to over 207,000 accounts. In capturing those accounts, it violated Colorado statute, Commission rule, and at least, the spirit of recent FCC rules. And it did so surreptitiously; other states were notified before the implementation of the policy while reports to the Colorado Commission specifically deleted references to the policy. It did all of this knowingly. We find that USWC's abuse of its market position to inhibit and damage competition was anticompetitive.

3. USWC argues that there is nothing showing an anticompetitive motivation. The argument fails. Motivation can be inferred through its actions. Further, if we believed the claim of lack of knowledge, this would indicate a competence that would be unacceptable. [FN1] But, we need not reach the issue. The acts were anticompetitive, regardless of motivation or knowledge.

F. Damages

1. The Complainants next ask that we assess damages against USWC analogous to § 40-15-112, C.R.S. Section 40-15-112, C.R.S., explicitly applies to the unauthorized switching of customers from one **carrier** to another (i.e., slamming) and, generally, requires that the guilty **carrier** pay any profits over to the original **carrier**. USWC argues that the Commission cannot assess damages absent legislative authority, and § 40-15-112, C.R.S., applies only to slamming. We agree with USWC.

2. Absent specific authority, the Commission cannot assess damages. Haney v. Public Utilities Commission, 194 Colo. 481, 574 p.2d 863 (1978). The Complainants provide no authority for their suggestion that the Commission can use the slamming statute here to measure and assess damages, and we find none. The request of the Complainants that damages be assessed will be denied.

G. District Court Action

*3 Similar to their request for damages, the Complainants ask that the Commission institute a penalty action against USWC in district court. § 40-7- 101, C.R.S. We note that the Complainants are able to initiate their own court action under § 40-7-102, C.R.S. Therefore, the exceptions of the Complainants will be denied, and the Commission will not proceed to district court.

H. Customer Notification and 120-Day Switch Period

1. There remain two matters discussed in the Recommended Decision, but not argued by the parties: the extension of the 120-day free period and a notification letter to the affected customer class. The ALJ suggested that there be another 120-day period during which customers can switch from USWC as their intraLATA **carrier** without paying a Switching Charge. USWC accepted that as a remedy, and the Complainants did not address the new period. We agree with the ALJ.

2. Sixty days after the date of final agency action in this docket, a new 120- day period shall begin. During the 120 days, members of the affected class who remain with USWC may **change** intraLATA **carriers** without charge. USWC is responsible for notifying the affected class of customers of the new 120-day period.

3. Similar to the 120-day notification, or in conjunction with it, USWC must re-notice the affected class of customers about its actions in freezing the accounts without authorization. The postcard notices sent out May 5 and 6, 1999 were inadequate. The new notice must be sent to all customers in the affected class who remain with USWC. It must explain in clear and neutral language: the differences between inter-and intraLATA service; what a PIC **freeze** is and what services may be subject to a **freeze;** that the customer was frozen to USWC without authorization; and the procedures required to lift a **freeze** if the customer wants to **change carriers**. The letter shall be submitted to Commission Staff for approval within 15 days of final agency action.

II. ORDER

A. The Commission Orders That:

1. The exceptions of U S WEST Communications, Inc., are granted in accordance with the above discussion.

2. The joint exceptions of MCI WorldCom, Inc., AT&T Communications of the

Mountain States, Inc., and NextLink, LLC, are denied in part and granted in part in accordance with the above discussion.

3. U S WEST Communications, Inc., shall immediately cease the practice of freezing intraLATA toll service accounts without first obtaining customer approval per existing rules.

4. All intraLATA service Switching Charges for leaving U S WEST Communications, Inc., collected from the affected class by U S WEST Communications, Inc., on or after June 7, 1999, shall be refunded to the payor.

5. Sixty days from final agency action in this docket, a new 120-day period for the affected customer class shall commence in which customers may **change** their intraLATA Presubscribed Interexchange **Carrier** without charge. U S WEST Communications, Inc., shall resend its previous mailed notice (revised for dates and additional steps to be taken if a Presubscribed Interexchange **Carrier freeze** is in place) advising customers of an opportunity to choose an intraLATA **carrier** other than U S WEST Communications, Inc. These provisions shall not apply to those customers who have already left U S WEST Communications, Inc.'s intraLATA toll service.

6. Prior to, or in conjunction with, the notice of the new 120-day switching period, U S West Communications, Inc., shall notify the affected class of customers who are still using U S WEST Communications, Inc., for intraLATA toll services, in accordance with the above discussion, of the differences in inter- and intraLATA services and the nature of Presubscribed Interexchange **Carrier freezes.** Such notice shall be submitted to the Commission Staff for approval within 15 days of final agency action.

7. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

8. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 22, 2000.

*4 FOOTNOTES

FN1 USWC's argument implies that its compartmentalization should protect the various departments from the knowledge of others. Under this argument, the more complex a corporation, the less the culpability or responsibility. The rationale is unacceptable. The argument neglects a basic legal fact: that the corporation is a whole; knowledge of one part can be imputed to the whole.

PUR Slip Copy, 2000 WL 574607 (Colo.P.U.C.)
END OF DOCUMENT

Mountain States, Inc., and NextLink, LLC, are denied in part and granted in part in accordance with the above discussion.

3. U S WEST Communications, Inc., shall immediately cease the practice of freezing intraLATA toll service accounts without first obtaining customer approval per existing rules.

4. All intraLATA service Switching Charges for leaving U S WEST Communications, Inc., collected from the affected class by U S WEST Communications, Inc., on or after June 7, 1999, shall be refunded to the payor.

5. Sixty days from final agency action in this docket, a new 120-day period for the affected customer class shall commence in which customers may **change** their intraLATA Presubscribed Interexchange **Carrier** without charge. U S WEST Communications, Inc., shall resend its previous mailed notice (revised for dates and additional steps to be taken if a Presubscribed Interexchange **Carrier freeze** is in place) advising customers of an opportunity to choose an intraLATA **carrier** other than U S WEST Communications, Inc. These provisions shall not apply to those customers who have already left U S WEST Communications, Inc.'s intraLATA toll service.

6. Prior to, or in conjunction with, the notice of the new 120-day switching period, U S West Communications, Inc., shall notify the affected class of customers who are still using U S WEST Communications, Inc., for intraLATA toll services, in accordance with the above discussion, of the differences in inter- and intraLATA services and the nature of Presubscribed Interexchange **Carrier freezes.** Such notice shall be submitted to the Commission Staff for approval within 15 days of final agency action.

7. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

8. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 22, 2000.

**4* FOOTNOTES

FN1 USWC's argument implies that its compartmentalization should protect the various departments from the knowledge of others. Under this argument, the more complex a corporation, the less the culpability or responsibility. The rationale is unacceptable. The argument neglects a basic legal fact: that the corporation is a whole; knowledge of one part can be imputed to the whole.

PUR Slip Copy, 2000 WL 574607 (Colo.P.U.C.)
END OF DOCUMENT

Exhibit G

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T BROADBAND PHONE OF WASHINGTON, LLC, Complainant, v. QWEST CORPORATION, Respondent.	)	Docket No. UT- COMPLAINT FOR EMERGENCY RELIEF FOR VIOLATION OF WAC 480-120-139 (REVERSE SLAMMING)

Pursuant to RCW 80.04.110, WAC 480-09-400 & WAC 480-090-510, AT&T Broadband Phone of Washington, LLC ("AT&T Broadband"), brings the following Complaint against Qwest Corporation ("Qwest"). In support of its Complaint, AT&T Broadband alleges as follows:

PARTIES

1. Complainant. AT&T Broadband is registered and classified by the Commission as a competitive telecommunications company. AT&T Broadband is authorized to provide switched and non-switched local exchange and long distance services in Washington.

2. Respondent. Qwest is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h) and provides local exchange and other telecommunications services throughout the State of Washington.

JURISDICTION

3. Commission Jurisdiction. The Commission has jurisdiction over this Complaint

and Respondent Qwest pursuant to RCW 80.04.110 (complaints), RCW 80.36.170 (unreasonable preference), and WAC 480-120-139 (changes in local exchange and intrastate toll services).

BACKGROUND

4. Service Areas Affected. AT&T Broadband provides facilities-based local exchange service in Washington, including Vancouver (as part of the greater Portland, Oregon market) and the greater Puget Sound area, including Seattle. Qwest is the ILEC that provides local service in these areas, and AT&T Broadband obtains services from Qwest to enable AT&T Broadband to provide local service to its customers, particularly local number portability ("LNP").

5. Qwest Rejection of AT&T Broadband Orders. During the week of February 18, 2002, AT&T Broadband began receiving rejections from Qwest when placing orders for LNP in Vancouver. The rejection notices stated, "Please have end user contact current local service provider to have local service freeze removed."

6. Qwest Local Service Freeze Implementation. The number of these rejections quickly increased during the week of February 25, 2002. AT&T Broadband contacted Qwest about these rejections, and Qwest informed AT&T Broadband that Qwest was now offering preferred carrier local service freezes in Washington, and that customers are required to contact Qwest to have the freezes removed.

7. Customer Inability to Remove Freeze. AT&T Broadband notified its customers that they would need to contact the Qwest business office to have the preferred carrier freezes on local service removed. The vast majority of these customers informed AT&T Broadband

that they had not authorized any freeze on their local service. Virtually every customer also notified AT&T Broadband that when they contacted Qwest to remove the freeze, the Qwest customer service representatives were unable to assist them. The customers' most common complaints to AT&T Broadband were that Qwest failed to remove the freeze despite multiple requests from the customer to do so. In at least one case, the customer informed AT&T Broadband that Qwest had told the customer that a fee of $5.00 would be added to the customer's next bill to cover the cost of removing the local service freeze.

8. AT&T Broadband Escalation Attempt. On or about March 4, 2002, AT&T Broadband escalated the issue to Qwest Western Region personnel. Qwest informed AT&T Broadband of the following process: AT&T Broadband should instruct the customer to call the business office to have the freeze removed. The customer service record would be updated in three to five days to reflect the removal, but AT&T Broadband would be able to submit a local service request ("LSR") on the next business day without receiving a rejection or delaying the service installation.

9. Continued Customer Inability to Remove Freeze. Qwest, however, has not implemented this process. Customers continued to contact AT&T Broadband complaining that they were unable to get Qwest to remove the freeze on their local service, and AT&T Broadband continued to receive rejection notices from Qwest after the customer had notified Qwest to remove the local service freeze.

10. AT&T Broadband Subsequent Escalation Attempt. On March 7, 2002, AT&T Broadband again escalated this issue, this time through a contact at Qwest's Executive Branch. This contact assisted AT&T Broadband and one customer immediately to remove a

local service freeze that the customer previously had been unable to get Qwest to remove. When AT&T Broadband requested assistance with another customer, the contact became upset and stated, "Why should I help you take our customer?" The contact discontinued the conversation when the AT&T Broadband representative tried to explain that the customer was making the choice to move to another service provider.

11. AT&T Broadband Attempts to Assist Customers. AT&T Broadband representatives have joined customers on three-way conference calls with Qwest to remove the local service freeze. They have spent hours being transferred to, or being required to call a variety of, toll free numbers to have the local freezes removed. Qwest now is referring such requests to a third party vendor for processing. Qwest provided a temporary toll-free number to assist AT&T Broadband and its customers to work through the backlog of customer requests to remove local service freezes. This contact has been only of moderate assistance because of its limited availability and effectiveness. Customers are continuing to experience substantial delays in getting Qwest to remove their local service freeze, if Qwest removes those freezes at all, and AT&T Broadband is continuing to have its LSRs rejected long after the customer has notified Qwest to remove the freeze.

12. AT&T Broadband Further Escalation Attempts. AT&T Broadband continued to attempt to resolve this issue with Qwest. On or about March 20, 2002, AT&T Broadband provided Qwest with a written list of concerns, including customers' complaints that they are required to call Qwest multiple times to remove the local service freeze and the lack of any process for, or consistency in, removing local service freezes through the Qwest retail office or available escalation measures. During a conference call on March 26, 2002, Qwest failed to

provide any substantive response to these concerns, representing only that Qwest would respond in writing on April 3, 2002. Attempts to escalate the issue to Qwest law department personnel have similarly met with unreturned messages or vague assurances that Qwest is aware of AT&T Broadband's concerns.

13. Qwest Unauthorized Freezes. AT&T Broadband repeatedly has requested that Qwest provide documentation that it or its third party vendor has properly frozen these customers' preferred carrier for local service. To date, Qwest has provided no such documentation, although Qwest claims to possess such documentation. Over 95% of the Vancouver-area customers experiencing problems with removing a local service provider freeze from their Qwest account to obtain service from AT&T Broadband deny authorizing any such freeze. In addition, five Seattle-area AT&T Broadband employees with Qwest local service contacted Qwest to determine whether there is a local service provider freeze on their account. Qwest informed three of the five that they had authorized a freeze on their local service provider, and all three of those employees deny authorizing any such freeze. The scant undocumented information that Qwest has provided to AT&T Broadband, moreover, includes Qwest's representations that some customers requested a local service provider freeze *after* those customers requested that AT&T Broadband provide their local service.

14. Customer Inability to Change Local Service Provider. As of March 26, 2002, approximately 124 Qwest customers seeking local service from AT&T Broadband in Vancouver have had problems removing the local service freeze Qwest has imposed. AT&T Broadband, as a result, has been unable to install local telephone service to these customers by the customer-requested installation date, if at all, and is devoting substantial resources in largely

unsuccessful attempts to assist these customers. AT&T Broadband has been compelled to reschedule 67% of these customers' service installations at least once and has been able to install only 14% on the initial date requested by the customer. Their common lament is, "I just want to change my phone company." Approximately 15% of these customers have ordered a new telephone number, rather than continue to attempt to port their existing telephone number, to obtain local service from AT&T Broadband while approximately 10% have cancelled their request for service from AT&T Broadband altogether. Qwest has subjected customers seeking local service from AT&T Broadband in Seattle to similar difficulties when attempting to change their local service provider.

CLAIMS FOR RELIEF

A. Violation of WAC 480-120-139 (Preferred Carrier Freezes)

15. Reallegation. AT&T Broadband realleges and incorporates by reference the allegations in paragraphs 1-14 above as if fully set forth herein.

16. Preferred Carrier Freeze. All local exchange companies must offer preferred carrier freezes, but "[t]he carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested." WAC 480-120-139(5). "No local exchange carrier may implement a preferred carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred carrier." WAC 480-120-139(5)(c).

> All local exchange carriers must offer customers, at a minimum, the following procedures for lifting a preferred carrier freeze:
>
> . . . .
>
> (ii) A customer's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting carrier to conduct a three-way conference call with the executing carrier and the customer in order to lift the freeze.

WAC 480-120-139(5)(d).

17. Unauthorized Preferred Carrier Freezes. Qwest has imposed preferred carrier freezes on customers' local exchange service without proper authorization in violation of WAC 480-120-139(5).

18. Refusal to Lift Preferred Carrier Freezes. Qwest has failed or refused to lift preferred carrier freezes on customers' local exchange service despite repeated customer requests, including during three-way conference calls with the customer and AT&T Broadband,

in violation of WAC 480-120-139(5)(d).

B. Violation of RCW 80.36.170 (Unreasonable Preference)

19. Reallegation. AT&T Broadband realleges and incorporates by reference the allegations in paragraphs 1-14 above as if fully set forth herein.

20. Unreasonable Disadvantage. RCW 80.36.170 provides in relevant part:

> No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation, or locality, or subject any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

21. Qwest Violation of RCW 80.36.170. Qwest's unauthorized imposition of preferred carrier freeze on local service and refusal to lift preferred carrier freezes on local service in response to customer requests is a form of slamming, is anticompetitive, and subjects AT&T Broadband and customers seeking local service from AT&T Broadband to undue and unreasonable prejudice or disadvantage in violation of RCW 80.36.170.

22. Need for Emergency Relief. Qwest's practices of reverse slamming of local service is an immediate danger to the public welfare requiring immediate action by the Commission as authorized in WAC 480-09-510.

PRAYER FOR RELIEF

WHEREFORE, AT&T Broadband prays for the following relief:

A. An immediate or expedited order from the Commission requiring Qwest:

(1) to discontinue any and all preferred carrier freezes on local service until Qwest has developed, adopted, and implemented Commission-approved policies and procedures for imposing and removing such freezes in compliance with WAC 480-120-139(5);

(2) to refund all customer payments for providing local service to customers who had not requested a preferred carrier freeze on their local service and/or for whom Qwest refused to lift a preferred carrier freeze for the month during which the customer requested local service from another local service provider and for any subsequent months, pursuant to WAC 480-120-139(6); and

(3) as authorized under RCW 80.04.380, to pay penalties of $1,000 for each violation of WAC 480-120-139, *i.e.*, $1,000 for each customer for whom Qwest has implemented an unauthorized preferred carrier freeze on local service and $1,000 per customer for whom Qwest refused to lift a preferred carrier freeze on local service for each day after the customer requested that Qwest lift the freeze until the freeze was lifted; and

B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this _____ day of March, 2002.

DAVIS WRIGHT TREMAINE LLP
Attorneys for AT&T Broadband Phone of Washington, LLC

By ______________________________
Gregory J. Kopta
WSBA No. 20519

VERIFICATION

Mike Mason certifies as follows: I am a telephony operations senior manager for AT&T Broadband Phone of Washington, LLC; that I have read the foregoing Complaint, know the contents thereof and believe the same to be true.

____
Mike Mason

SUBSCRIBED AND SWORN to before me this _____ day of March, 2002.

____
NOTARY PUBLIC in and for the State of ___________,
residing at ______________________________.

Exhibit H

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: COX IOWA TELCOM, LLC, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-02-1

FINAL DECISION AND ORDER

(Issued April 3, 2002)

TABLE OF CONTENTS

PROCEDURAL HISTORY

On January 3, 2002, Cox Iowa Telcom, LLC (Cox Iowa), filed a formal complaint against Qwest Corporation (Qwest) with the Utilities Board (Board) alleging that Qwest's decision to offer local service freezes (LSFs) to Iowa customers is an anti-competitive measure. On January 22, 2002, Cox Iowa filed an application and motion to stay Qwest's implementation of LSFs in Iowa, which became available to Iowa customers on January 17, 2002.

On January 23, 2002, Qwest filed a response to Cox Iowa's complaint and made a motion to dismiss the complaint, asserting that the Board rules allow for LSFs and that Cox Iowa's complaint, therefore, had no merit.

On February 6, 2002, the Board issued an order docketing the complaint, establishing a procedural schedule, and granting Cox Iowa's motion to stay the imposition of Qwest's LSF. In that order, the Board requested that Qwest file a proposed tariff provision outlining the details of the local service freeze option.

On February 11, 2002, MCI Metro Access Transmission Services, Inc. (MCImetro), filed with the Board a petition to intervene as a local exchange competitor of Qwest. The Board issued an order granting MCImetro's petition on February 25, 2002.

Also on February 11, 2002, Qwest filed a proposed tariff provision regarding the local service freeze in response to the Board's February 6, 2002, order.

A hearing was held in this docket on March 4, 2002. Cox Iowa, Qwest, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) entered appearances through their counsel. Also on March 4, 2002, MCImetro filed with the Board a withdrawal of its intervention in this docket.

At the hearing, the Board noted that the number of confirmed slamming complaints received by the Board was relevant to the inquiry and that Board staff was preparing an exhibit outlining that information. On March 7, 2002, the Board issued an order proposing to take official notice of the number of local service slamming complaints received by the Board since January 1, 2001, and revising the procedural schedule so as to allow the parties adequate time to respond to the information. No objections were filed by the parties in response to the slamming information compiled by the Board. Therefore, effective March 13, 2002, all local slamming information compiled by the Board for the purpose of this docket and illustrated in Board's Exhibit "A," became part of the evidentiary record in this matter.

ISSUES

A. Whether the Board has the authority to prohibit the imposition of a local service freeze.

In support of its decision to implement a local service freeze option in Iowa, Qwest cites to Iowa Code § 476.103(8), which states that the Board "shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes." Qwest asserts that through this Code section, the Iowa legislature mandated the Board allow for the implementation of a local service freeze and, therefore, the Board cannot prohibit Qwest from implementing its LSF.

Cox Iowa contends that despite the language of Iowa Code § 476.103(8), the Board was given the authority to prohibit the imposition of a local service freeze under the language of Iowa Code § 476.103(1), which provides, "[s]uch rules shall not impose undue restrictions upon competition in telecommunications markets." Cox Iowa contends that Qwest's proposed LSF imposes undue restrictions on Iowa telecommunication competition, and therefore, the Board has the authority to prohibit such a practice.

Consumer Advocate did not address this issue.

The Board finds that Iowa Code § 476.103 grants it the authority to prohibit Qwest from implementing its proposed local service freeze. In Chapter 476.103, the legislature specifically mandated the Board adopt competitively neutral rules regarding the solicitation, imposition, and lifting of preferred carrier freezes, but this section does not specifically mandate the imposition of local service freezes.

In accordance with that Code section, 199 IAC 22.23(2)"d" encompasses the Board's rules regarding preferred carrier freezes. While these rules discuss preferred carrier freezes for local exchange services, 199 IAC 22.23(2)"d"(4)"3" provides:

> To the extent a jurisdiction allows for the imposition of preferred service provider freezes on additional preferred service provider selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll.), . . .

This language indicates the Board reserved the right to make the determination at issue in this case.

In addition, the FCC has recognized that "preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be or newly opened to competition." See FCC 98-334, CC Docket No.94-129, ¶ 135. Therefore, the FCC has explicitly authorized individual states to adopt a moratorium on intrastate preferred carrier freezes. Id. at 137. Specifically, the FCC has provided that individual states, based on their observations of slamming incidents in their jurisdictions and the development of competition in relevant markets, "may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anti-competitive conduct." Id.

As stated above, the Board's rules in 199 IAC 22.23(2)"d"(4)"3" conform to the FCC's order that allows for jurisdictions to adopt a moratorium on the imposition of a local service freeze if such action is appropriate to maintain healthy competition. Therefore, the Board finds it has the authority to determine whether to allow Qwest to implement a local service freeze option in Iowa.

B. Whether the issue of local exchange carrier slamming is prevalent, or is expected to become prevalent, in Iowa so as to necessitate the implementation of a local service freeze option for the protection of Iowa customers.

Cox Iowa cites to Board's Exhibit "A," which provides that since January 1, 2001, a total of 14 slamming complaints involving local dial tone were confirmed by Board staff as being local slams. (See Exhibit A). Cox Iowa asserts that the information provided in Board Exhibit "A" shows that Iowa consumers are not at risk for local slams. Cox Iowa also suggests that the Board has sufficient tools to deal with and discipline rogue carriers who commit local slams.

Qwest states that its LSF protection satisfies a legitimate need by thwarting unauthorized slamming. (Tr. at 76-77). Qwest asserts that the 42 local service slamming complaints received by the Board since January 1, 2001, are significant enough to merit the necessity of an LSF. (See Exhibit A). Qwest states that even one local slamming complaint is too many, and the 14 Board-confirmed cases could have been avoided had the LSF option been in effect. (See Exhibit A).

Consumer Advocate asserts that the evidence officially noticed by the Board in Exhibit "A" shows that the occurrence of local service slamming in Iowa is not *de minimis*. (See Exhibit A). Consumer Advocate posits that this information fails to support a prohibition of local service freezes. In addition, Consumer Advocate contends it would be unwise to prohibit the practice of local service freezes in Iowa based on a generalized allegation that the practice creates a potential for abuse.

The record indicates that as of June 30, 2001, Iowa had 1,544,509 end-user switched access lines. (See Exhibit 102). The evidence officially noticed by the Board in Exhibit "A" shows that Board staff has received 42 local service slamming complaints since January 1, 2001, and that four telecommunications carriers have been implicated. (See Exhibit A). Of those complaints, 14 have been determined to be instances of local slamming, 24 have been determined as "no slams," and four remain under investigation. (See Exhibit A).

Despite the assertions by Qwest and Consumer Advocate that the evidence of 14 confirmed local service slams since January 1, 2001, is not *de minimis*, the Board finds that this number is insignificant, especially when placed in proportion with the number of local service lines in Iowa. Therefore, the Board finds that local service slamming is not a problem in Iowa at this time and, as such, does not warrant the imposition of a local service freeze for consumer protection.

C. Whether the implementation of a local service freeze by Qwest Corporation will have an adverse effect on the competitive telecommunications market in Iowa.

Cox Iowa maintains that competition in the telecommunications market is dismal, especially in rural Iowa, and that only a handful of well-positioned competitive local exchange carriers (CLECs) have survived and thrived. Cox Iowa states that the FCC recognized the potential problems with freezes in less competitive markets and, as a result, gave states the ability to adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes. See FCC 98-334, CC Docket No. 94-129, ¶ 137. Cox Iowa concludes that with only 14 Board-verified local slams by two companies since January 1, 2001 (See Exhibit A), in addition to limited competition in Iowa, especially in the rural areas, the Board has a significant reason to adopt a moratorium on the imposition of local service freezes.

Qwest disagrees with Cox Iowa's position that local competition in Iowa is virtually non-existent. Qwest cites to the FCC Industry Analysis Division of the Common Carrier Bureau report on local telephone competition, which reports that the CLECs in Iowa possess 11 percent of the total market as of June 30, 2001.

(Tr. at 29-30; See also Exhibit 102). Qwest concludes that this figure demonstrates that competition in Iowa is alive and well and could withstand the implementation of a local service freeze.

Consumer Advocate recognizes that local service freezes have the potential to be used in an anti-competitive manner, and if such a use occurs in the local market, it could further slow the development of competition and frustrate the central policy objective of bringing competition to Iowa markets. Consumer Advocate also points out that according to its own evidence, Qwest retains over 85 percent of the local telephone lines in its Iowa territories of incumbency (See Tr. at 152), and according to the FCC, incumbents retain 89 percent of the local telephone lines statewide. (See Exhibit 102).

The fact that Qwest retains a major market share of the local telephone lines in its Iowa territories and that as of June 30, 2001, CLECs possess a small percentage of the total market, demonstrates that local service competition is in its infancy in Iowa. The added step for the customer of contacting both Qwest and the CLEC in order to change the local service provider may be all that is needed to prevent a customer from making that switch.

Given the negligible state of local competition in Iowa and the few instances of local service slamming, the Board finds that a local service freeze implemented by Qwest at this time is unnecessary to protect consumers and will have a detrimental effect on local competition.

FINDINGS OF FACT

1. The number of Board-confirmed local service slams since January 1, 2001, is minimal, especially when placed in proportion with the number of local service lines in Iowa, and demonstrates that local service slamming currently is not a problem in Iowa.

2. CLECs possess a small percentage of the total Iowa telecommunications market; an indicator that local competition is in its infancy in Iowa, and as such, the imposition of a local service freeze will have a detrimental effect on local competition.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and the subject matter of this proceeding pursuant to Iowa Code § 476.103(6).

2. The FCC has given states the authority to adopt a moratorium on the imposition or solicitation of local service freezes, if they deem such action appropriate to prevent incumbent local exchange carriers (LECs) from engaging in anti-competitive conduct. See FCC 98-34, CC Docket No. 94-129, ¶ 137.

3. The Iowa Code and Board rules give the Board the discretion to prohibit Qwest's implementation of a local service freeze in Iowa.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Pursuant to the findings above, Qwest Corporation is prohibited from implementing a local service freeze in Iowa at this time.

2. Qwest Corporation shall withdraw its proposed tariff provision, filed February 11, 2002, regarding the local service freeze option, within 30 days of the issuance of this order.

3. Any customers enrolled in the local service freeze option prior to the issuance of the Board's February 6, 2002, order granting Cox Iowa Telcom's motion to stay the implementation of the freeze shall be notified of this order and their participation in the local service freeze option shall be terminated within 30 days of the issuance of this order.

UTILITIES BOARD

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 3rd day of April, 2002.

Exhibit I

Service Date: April 25, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Commission's Investigation of Qwest Communications' Implementation of a Local Carrier Freeze Option	)))	UTILITY DIVISION DOCKET NO. D2002.2.14
IN THE MATTER of the Qwest Communications' Implementation of a Local Carrier Freeze Option	))	UTILITY DIVISION DOCKET NO. D2002.2.22

NOTICE OF COMMISSION ACTION

The Montana Public Service Commission opened Docket D2002.2.14 to investigate Qwest Communications' planned implementation of a preferred local carrier freeze option for its Montana customers. In a related docket, D2002.2.22, the Commission issued a notice of commission action on February 25, 2002, directing Qwest to suspend its offering of a local carrier freeze option pending the Commission's determination of its compliance with the Commission's carrier freeze rules (ARM 38.5.3816 through 38.5.3818).

On April 23, 2002, at a duly noticed work session, the Commission:

(1) decided in Docket D2002.2.22 that Qwest had submitted information that demonstrated its proposed preferred local carrier freeze program would comply with the Commission's carrier freeze rules;

(2) after considering the comments received in Docket D2002.2.14, imposed a moratorium on Qwest's implementation of the local carrier freeze program for 18 months, at which time Qwest may request the Commission to revisit this decision.

Background

On January 16, 2002, Qwest Communications notified the Commission by letter that the company was implementing a local carrier freeze option in Montana. According to Qwest, the option will allow customers to place a "freeze" on their preferred choice of local service provider in the same way they are now able to request a freeze of their interLATA and/or intraLATA long distance carrier choices. A preferred carrier freeze prevents a change in a customer's preferred carrier selection unless the customer gives the carrier from whom the freeze was requested his or her express consent. Preferred carrier freezes are offered to customers as a tool to prevent unauthorized carrier changes (slamming). Qwest indicated in its letter to the Commission that customers who call the Qwest business office will be informed that the local carrier freeze option is available and that Qwest will also provide information to customers about the new option in a bill insert.

On January 29, 2002, AT&T notified the Commission by letter that it opposes Qwest's implementation of a local carrier freeze program. AT&T cited a Federal Communications Commission order in which the FCC recognized the potential for abuse of preferred carrier freeze options in newly competitive markets and specifically stated that states may prohibit the implementation or solicitation of preferred carrier freezes if they determine such an action to be appropriate to prevent incumbent local carriers from engaging in anticompetitive conduct.[1] AT&T requested that the Commission prohibit Qwest from implementing the local carrier freeze program unless and until Qwest has demonstrated the need for it and has proved it can be implemented without harming or impeding local service competition in the state. AT&T further proposed that, if a local carrier freeze option is necessary in order to protect consumers from slamming, then a neutral third-party administrator should operate the program rather than Qwest in order to protect the interests of competitors.

In the Notice of Inquiry (Docket D2002.2.14) the Commission asked parties to address in their comments Qwest's plan for solicitation and implementation of the local carrier freeze option and the issues raised by AT&T, including the proposal for a third-party administrator for preferred carrier freezes. Commenters who asserted that the local service market is not sufficiently competitive to warrant the implementation of a local carrier freeze option were asked to comment as to what standards, criteria, or benchmarks the Commission might use to determine that the Montana market is sufficiently competitive to warrant such a program. The Commission also invited comments as to the effectiveness and ease of use of Qwest's existing process for lifting carrier freezes on customers' carrier choices. Commenters could also provide any other pertinent information that was not specifically requested in the notice.

Summary of comments

The Commission received timely comments from Qwest, Touch America (TA), and Montana Telecommunications Association (MTA). The Commission did not accept the comments of WorldCom because they were filed after the comment deadline had passed. The parties' comments are summarized below.

Qwest

In Docket D2002.2.22, Qwest was directed by the Commission to demonstrate that its planned local carrier freeze program complied with Commission rules and to explain why the offering was not filed as a tariff. Qwest responded with a March 11, 2002 filing that describes the program in detail and in which Qwest contends it complied with Commission rules. In response to the tariff question, Qwest argues that § 69-3-301, MCA does not require a tariff be filed for a service that is offered at no charge. Further, Qwest notes that it has offered interLATA and intraLATA carrier freezes for several years and the Commission has not required that Qwest submit tariffs for those offerings.

Qwest also submitted comments in response to the Notice of Inquiry docket. In those comments, Qwest points out that the Commission adopted rules in 1999 that mirror the FCC's related to preferred carrier freezes for every type of telephone service – local exchange as well as intraLATA/intrastate, interLATA/interstate and international toll service – in response to the problem of slamming. According to Qwest, the company wants to offer preferred local carrier freezes in Montana in order to promote customers' ability to choose to add protections against slamming. Qwest states its freeze program complies with Commission and FCC rules and emphasizes that the objective of the Commission's and FCC's rules is to prevent local as well as long distance slamming.

Qwest notes the Montana PSC received 35 local slamming complaints in 2001, and claims the incidence of local slamming will increase with increased competition. Qwest also cites information disseminated by two consumer protection organizations and several state

[1] See AT&T letter, pp. 2-3, citing the FCC's *Second Report and Order, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, FCC 98-334, released December 23, 1998, at para. 36.

regulatory commissions to warn consumers of local slamming and to encourage them to use the freeze option to protect themselves from slamming.

Qwest cites statements made by the FCC in its *Second Report and Order* on slamming in which the FCC said: its rules were meant to combat slamming in both the toll market and in the local service market as competition develops; it anticipated an increase in local service slamming if effective rules were not implemented; and preferred carrier freezes enhance competition by fostering consumers' confidence that they control their provider choices. Qwest adds that the FCC rejected CLEC requests to ban carrier freezes and local exchange carriers' solicitation of orders for carrier freezes and concluded that the best way to ensure carrier freezes are used to protect consumers, rather than erecting a barrier to competition, was not to prohibit them but to educate consumers about obtaining and removing freezes.

According to Qwest, the potential for anti-competitive effects resulting from preferred local carrier freezes is countered by the Commission's requirement for verification by an independent third party of a customer's authorization to implement a preferred carrier freeze. In addition, Qwest argues a preferred local carrier freeze does not "lock" the customer into that carrier choice because both the FCC and Commission rules include allowable methods for lifting preferred carrier freezes, including the use of a three-party call that allows a new carrier to confer with both the customer and Qwest to authorize the lifting of the customer's freeze.

Qwest rebuts the claim made by AT&T in its letter to the Commission that local service competition is just developing in Montana by citing the Commission's finding in its Section 271 docket (D2000.5.70) that numerous competitive local exchange carriers (CLECs) are providing competitive service in Montana. Qwest argues that AT&T's request that the Commission prohibit Qwest's implementation of a local carrier freeze program would deny local slamming protections to customers. According to Qwest, local slamming can have more significant impact on customers than long distance slamming and restoring service to the preferred local carrier can be more frustrating. Qwest asserts that it has implemented the local carrier freeze program in 9 of the 14 states in the region. Qwest emphasizes that three of those states (Washington, Colorado and Utah) <u>require</u> LECs to offer preferred carrier freezes and two of those states require LECs to educate customers about the availability of carrier freezes.

Qwest opposes AT&T's proposal that a neutral third party administer preferred local carrier freezes in order to protect the interests of competitors because it would be costly and because existing rules require the incumbent local exchange carrier (LEC) to act as an unbiased administrator of carrier freezes. Qwest reiterates that FCC and Commission rules require that an independent third party must verify that a customer has chosen to freeze their carrier choice(s).

Touch America

TA opposes Qwest's proposal to implement a local carrier freeze program. While everyone acknowledges there is a nationwide problem with long distance slamming, which justifies the need for the availability of long-distance carrier freezes, TA argues there is no such problem with local service slamming. TA claims that, unlike the local exchange market, the long distance market is fully competitive and a freeze program protects consumers without impeding competition. TA argues Qwest is not a neutral party when it comes to customers' changes in local service providers because most of the customers changing local carriers are leaving Qwest. For that reason, asserts TA, if Qwest is allowed to implement its local carrier freeze program, the Commission must oversee it to prevent anti-competitive behavior by Qwest.

According to TA, the preferred local carrier freeze option, in conjunction with Qwest's Winback program, allows Qwest to impede local service competition. TA asserts that Qwest will be able to implement large numbers of local carrier freezes to Qwest by soliciting them on each of the thousands of calls regarding service or billing issues the company receives each month from customers to its business offices. TA argues that nothing prohibits Qwest from using the requirement that a customer contact Qwest directly to lift a local carrier freeze from using that contact as an opportunity to retain the customer. According to TA, the freeze removal process allows Qwest to know immediately to which customers Winback efforts should be directed.

TA argues that the process will cause delays and frustrations for CLECs and their prospective customers, thereby creating a barrier to competition. A CLEC who signs up a customer will not be aware if the customer has a freeze in place until Qwest rejects the CLEC order to change the customer's provider because the customer's account is frozen. The CLEC must then re-contact the customer to have the customer get the freeze lifted, at which point it is unknown how long it takes Qwest to remove the freeze.

According to TA, no LEC should be able to implement a preferred local carrier freeze until the Commission verifies there is a problem with local service slamming. TA suggests that the Commission prohibit local carrier freezes until it has received verified local slamming complaints from at least 2 percent of the total number of access lines whose local service providers have been changed. Additionally, TA recommends that if the Commission approves Qwest's local carrier freeze program, it should adopt performance standards and penalties for local slamming, including significant fines.

TA supports the idea of a neutral, third-party administrator for local carrier freezes that would operate at the direction of the Commission. Local freeze administration would be funded by LECs who wish to implement local carrier freeze programs, who could recover its costs from customers requesting local freezes. TA recommends the administrator of the program maintain and keep current a list of customers who have chosen to freeze their choice of local provider and make the list available to all local service providers.

Finally, TA recommends a freeze program should include a quick method to lift a freeze that results in the freeze being lifted in 8 hours or less, and that any local service provider who presents the freeze administrator with a signed letter of agency from the customer should be able to have the freeze lifted without further customer contact.

MTA

MTA states generally that it is premature and anticompetitive for Qwest to implement a local carrier freeze option in Montana and that it supports AT&T's comments in its 1/28/02 letter to the Commission.

MTA argues there is no local service slamming problem which warrants a local carrier freeze program and that the need for such a program should be demonstrated before Qwest is allowed to implement it due to such a program's effect of impeding competition. MTA questions Qwest's motives for adopting this program now, when there is very little local service competition. MTA contends Qwest wants to lock customers into its local service prior to competition presenting a threat to Qwest's domination of the local service market.

According to MTA, freezing an account is easier than unfreezing it because Qwest will solicit all customers when they call the company for any reason as well as market the freeze option, which is offered at no charge. However, MTA says, significant additional effort is required on the parts of the customer and the CLEC to unfreeze an account.

MTA agrees with the spirit and intent of the Commission's slamming rules, but objects to implementation of a local service freeze in the absence of competition and evidence of local slamming. MTA asserts that the Commission has the authority to impose an indefinite moratorium on local service freezes and that other states have done so.

MTA recommends the Commission impose an indefinite moratorium on the application of local service freezes in Montana until the Commission determines that lifting the moratorium is in the public interest, as demonstrated by the extent of local service competition in Montana and by the extent of a local service slamming problem as measured by objective data obtained by the Commission. Alternatively, MTA suggests that Qwest could petition the Commission to lift the moratorium, but would have to demonstrate a need for the local service freeze option and that a freeze program would not impede competition.

According to MTA, if a freeze program is implemented at some time, the Commission must pay close attention to incumbent LECs' marketing of local freezes because some customers may not understand the potential effect of electing a freeze. Also, MTA suggests the Commission periodically review the ease of lifting local service freezes because the effect of a freeze that is easier to impose than to lift is to make it difficult for customers to switch local service providers.

Discussion

As required by the Notice of Commission Action in Docket D2002.2.22, Qwest submitted information about its local carrier freeze program to demonstrate to the Commission that the program complied with Commission rules. The Commission has reviewed Qwest's filing and has determined that Qwest's plan for such a program includes all of the elements required by Commission rules.

The Commission did not address the issue of whether Qwest was required to file a tariff for this service offering.

Although the program as proposed would comply with Commission rules regarding preferred carrier freezes, the Commission imposed a moratorium on Qwest's preferred local carrier freeze program for these reasons cited in comments received in Docket D2002.2.14:

- As argued by MTA and TA, it is likely that Qwest's implementation of the local carrier freeze option at this time, when CLECs' share of the local service market is minimal, will impede the development of competition. As evidence of significant local service competition, Qwest points to the finding on Track A in the Commission's 271 docket that numerous CLECs are providing service to thousands of Montana customers; however, the Commission notes the same Track A report cites Qwest's own estimates of CLECs' market share as of April 2001 to be 3.8% or 8.3%, depending on the calculation method. It is clear Qwest is the local service provider for the lion's share of customers in its Montana service territory.

  The Commission agrees with comments that, if the program was implemented, Qwest would be successful in locking large numbers of customers into its local service, especially given Qwest's plan to solicit customers regarding this program whenever customers call Qwest's business office for any reason. Once a customer's choice of Qwest as the local service provider is frozen, the customer must speak or write to Qwest directly in order to lift the freeze. This requirement for the customer's express consent to remove a freeze is the critical element of the customer protection that carrier freezes provide to customers. However, the freeze-lifting process with its necessary delays when applied to the local service market likely will result in customer frustration and the loss to CLECs of customers who intended to change local service providers but were deterred by the process.

- The need for protection against local service slamming has not been established. Carrier freezes have provided an important anti-slamming tool in the long-distance market where competition between carriers is robust and slamming is an unfortunate by-product. In contrast, competition is just developing in Qwest's local service market in Montana and the incidence of local service slamming is negligible. Although Qwest cites the 35 informal consumer complaints about local slamming received by the Commission in 2001 as evidence that a local

> slamming problem exists, a review of those complaints indicates that all but one were complaints against one CLEC and complaints staff reports that in most cases the CLEC had obtained the complainant's authorization in accordance with PSC rules. Qwest may be correct that, as local competition grows, so will the incidence of local service slamming, but the unproven need at this time to provide consumers with protection against local service slamming is outweighed by the Commission's interest in promoting development of robust local service competition.

The Commission imposes a moratorium on Qwest's local carrier freeze program, but allows Qwest to request the Commission revisit this decision after 18 months. By that time, the Commission, Qwest, CLECs and consumers will all have more experience with and knowledge of local service competition and the incidence of local slamming. In any future review, the Commission would include in its consideration the extent of local service competition and evidence of the existence of a local service slamming problem that would be addressed by implementation of a local carrier freeze option.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman
JAY STOVALL, Vice Chairman
BOB ANDERSON, Commissioner
MATT BRAINARD, Commissioner
BOB ROWE, Commissioner

Exhibit J

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Qwest Proposal to Offer Local Service Freeze Protection

ISSUE DATE: May 7, 2002

DOCKET NO. P-421/CI-02-75

ORDER REJECTING LOCAL SERVICE FREEZE OPTION AND REQUIRING THE COMPANY TO STOP OFFERING IT AT THIS TIME

PROCEDURAL HISTORY

On January 17, 2002, Qwest filed a letter informing the Commission that Qwest intended to implement Local Service Freeze (LSF) Protection for its customers in Minnesota, effective January 17, 2002.

On January 25, 2002, the Commission issued a Notice of Qwest's Filing Regarding LSF and requested comments. On February 7, 2002, the Commission granted an extension of time to file comments (February 12) and reply comments (February 22).

From February 1, 2002, through February 22, 2002, the following parties filed comments and reply comments in response to the Commission notice: AT&T, HickoryTech, Qwest, DOC, Allegiance, Astound broadband, the Residential and Small Business Utility Division of the Office of the Attorney General (RUD-OAG), WorldCom, and the CLEC Coalition.

The Commission met on March 21, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. QWEST'S PROPOSAL

On January 17, 2002, Qwest filed a letter informing the Commission that Qwest intended to implement Local Service Freeze (LSF) Protection for its customers in Minnesota. Customers choosing LSF Protection would be protected from unauthorized, illegal switching of a customer's preferred local exchange carrier.[1]

Qwest cited FCC rules and orders which indicate that a preferred carrier freeze (PCF) was lawful, a useful tool against slamming, and would also enhance competition. Qwest stated that the FCC also addressed the concern raised by competitors that this would be a barrier to competition. Qwest reported that the FCC stated that freezes would not be a competitive barrier as long as subscribers fully understood the nature of the freeze and how to remove it if they chose to use this service.

Qwest cited rules and statutes adopted in Washington, Utah, Colorado and 21other states outside Qwest's region also allow or require these freeze options. Qwest argued that this shows that a carrier freeze is a valuable consumer protection and enhances competition.

II. AT&T COMMENTS

AT&T opposed Qwest's plan to implement a local PFC at this time. AT&T stated that Qwest's plan appeared to be an attempt to create customer confusion and to make it difficult for a customer to move to another provider.

AT&T noted that although the FCC has authorized PCFs it also authorized individual states to conclude, after considering factors (such as the incidence of slamming and the development of competition in relevant markets), that the detriment to consumers of a PCF outweighed the benefit. AT&T argued that Qwest had not demonstrated the need of the program and had not shown that it could be implemented without harming competition in the state.

Responding to Qwest's reference to two other state commissions (Washington and Colorado) requiring Qwest to provide a local freeze option, AT&T noted that the Washington and Colorado commissions imposed service freezes for both local and long distance as part of a rulemaking over two years ago. AT&T stated that more recently the trend has been the other way: two commissions (New York and Nebraska) have denied such freezes and in Arizona, Qwest withdrew its local PFC proposal after being strongly opposed by CLECs in that state.

---

[1] LSF does for a customer's local service what a PIC Freeze (primary interexchange carrier freeze) does for the customer's long distance service. The general term for both local and long distance freezes is Preferred Carrier Freezes (PCFs). PCFs are authorized (but not required) in FCC Rules, Part 64.1190. A freeze prevents a competing carrier from switching a customer's choice of carrier without the customer lifting the freeze.

III. HICKORYTECH COMMENTS

Crystal Communications, Inc. d/b/a HickoryTech (HT) believes further investigation is necessary before approving Qwest's LSF proposal. HT is a CLEC in Minnesota and offers CLEC services in five Qwest exchanges. HT stated that it was concerned that Qwest intends to offer LSF to inhibit competition for its own self-interest. HT noted that having a LSF on a customer's account would require the customer to contact Qwest to remove the freeze, which would give Qwest a significant marketing opportunity to try to retain the customer. HT asserted that such a marketing effort would clearly be anti-competitive. HT further objected to Qwest offering this service under the guise of protecting the customer. In sum, HT argued that further investigation is necessary to avoid potentially anticompetitive, self-serving actions by Qwest.

IV. ALLEGIANCE TELECOM COMMENTS

Allegiance, a facilities-based CLEC providing service in Minnesota, stated that more information is necessary to judge whether Qwest's LSF proposal should be approved. Allegiance expressed concern that Qwest will not properly administer its proposed LSF program and, as a result, create anticompetitive restrictions on customers wanting to select another carrier. Allegiance recommended that the Commission institute measures that protect consumer choice and competition to guard against improper administration of the LSF protection plan.

V. ASTOUND BROADBAND COMMENTS

Seren Innovations, Inc. d/b/a Astound broadband (Astound), Qwest's only residential facilities-based competitor in the St. Cloud area, recommended rejection of Qwest's LSF proposal. Astound opposed Qwest's LSF plan arguing that it is anticompetitive and only serves Qwest's self-interest to win back customers. Currently, the interaction of switching customers to Astound's service is handled between the service providers. Astound argued that forcing a customer to reject one service provider for another would inhibit many customers from making a switch. Astound stated that this obviously anticompetitive proposal should be rejected.

VI. WORLDCOM COMMENTS

WorldCom recommended that Qwest's service freeze should be suspended because it violates the law, is discriminatory, and harmful to customers and competition. WorldCom argued that Qwest must implement changes to its procedures so that a customer is not burdened when it wishes to lift the LSF. Until those changes are made, WorldCom maintained, Qwest should not be offering its LSF option.

VII. THE DEPARTMENT'S COMMENTS

The Department recommended that the Commission deny Qwest's LSF proposal. If Qwest is able to demonstrate that the benefits exceed the detriments of such a proposal, the Department recommends that it be implemented via a tariff.

The Department stated that Minnesota's regulatory requirements do not prohibit Qwest's LSF proposal but argued that public policy would support denying the proposal. The Department noted that Minnesota law (Statute §237.66, subd. 1a) addresses a customer's option for a long distance carrier freeze but does not address local exchange service freezes. The Department cited Minn. Stat. §237.011, however, which lists telecommunications goals in Minnesota which include the promotion of customer choice, consumer protection and encouraging fair and reasonable competition for local exchange service.

The Department also cited Minn. Stat. 237.761, subp. 1 and Qwest's Alternative Form of Regulation (AFOR) Plan which govern tariff and price list filing requirements. The Department argued that Qwest should be required to file a tariff for its LSF proposal if the Commission does ultimately allow it.

The Department also considered whether local service slamming is a concern in Minnesota. Fewer than 10 complaints have been made according to Qwest's response to an information request. Further, the Department noted that the OAG, which also handles telephone customer complaints, has indicated that there have been no knowing violations of anti-slamming laws by local service providers.

VIII. THE RUD-OAG'S COMMENTS

The RUD-OAG recommended that the Commission reject Qwest's LSF proposal. The RUD-OAG stated that it is not opposed to customers having the option of a LSF but is concerned that Qwest's proposal is not competitively neutral. Qwest's current proposal would allow Qwest to advise customers of the freeze option each time there is a request for a new service, whenever there is a move to a new address, and when a new line is added. The RUD-OAG observed that Qwest appears to want to promote this free service rather than just present it as an option.

The RUD-OAG listed several criteria that it felt must be met before a LSF proposal would be allowable and stated that Qwest's current proposal meets none of these criteria.

IX. QWEST'S REPLY COMMENTS

Qwest responded to concerns raised about 1) the customer notices (agreed to submit LSF bill inserts for Commission review), 2) the frequency and dissemination of information (asserted that the FCC rules requiring clear and neutral language would prevent abuse), 3) notices to CLECs that a freeze had been placed in effect (agreed to inform CLECs), 4) office hours (identified hours that it deemed reasonable), and 4) tariffing of the LSF service (agreed to do so if the Commission requested it).

Regarding the concern that Qwest personnel would try to persuade customers calling to cancel the freeze to continue the service, Qwest stated that it would not do any marketing or make inquiries for anyone calling to remove a freeze. Qwest stated that during customer calls or three-way calls with the new carrier, the customer will identify himself or herself and Qwest will lift the freeze.

Regarding the benefits of the LSF option (need for the service), Qwest stated that FCC, Washington, Colorado, and Utah policymakers supported the benefit of this option. Qwest argued that rather than wait to offer this protection until slamming proliferates in the local market, the customer should be given the choice to decide.

Qwest also argued that a LSF protection advances the telecommunications goals contained in Minn. Stat. §237.11, namely promoting consumer choice and ensuring customer protection. Further, Qwest stated that the LSF is available to Qwest's wholesale customers (CLECs) as well as to Qwest's retail customers.

X. COMMISSION ANALYSIS AND ACTION

The Commission has carefully considered Qwest's LSF service and even assuming the service is administered strictly as Qwest stated in its reply comments, the Commission views the LSF service as having the potential to inhibit local competition, which is at a particularly fragile stage of development in Minnesota. And as a practical matter it would be difficult to assure that in practice the service would not be operated in a way more directly burdensome to competition than Qwest acknowledges.

The Commission acknowledges that negative impact upon competition can be outweighed by a showing of benefit to consumers. However, Qwest has made no showing that slamming by its competitive local service providers is a problem in Minnesota.[2] Therefore, based on the record in this case, no consumer benefit from this offering has been shown.

The Commission notes that protections against slamming at the local level are already in place in Minnesota, should it occur: a company that cannot verify that it had authorization to switch a customer is charged a penalty for not having proper verification. Qwest, in most if not all of its interconnection agreements includes a penalty charge of $100 for submitting an order to switch a customer without having the proof of authorization. The Commission also has authority to penalize a carrier that violates Commission rules or orders. In the absence of evidence to the contrary, it appears that these protections have been adequate to minimize the danger of local slamming in Minnesota and the need for a LSF option.

In fact, simply offering the service suggests that customers need protection from CLECs' local service slamming practices, a suggestion which the record in this case does not substantiate. As such it tends to unfairly disparage and, hence, unfairly burden Qwest's local competitors.

---

[2] Decisions in other jurisdictions cited by Qwest (Washington, Colorado, and Utah) are not persuasive of a problem in Minnesota. The Minnesota public agencies participating in this matter (the Department and the RUD-OAG) both indicate a negligible incidence of local slamming and strongly advocated rejection of Qwest's freeze offering.

In these circumstances and given the Commission's statutory obligation to promote local service competition (Minn. Stat. § 237.11), the Commission finds that Qwest's offering of LSF in Minnesota is not in the public interest. The Commission will deny the Company's offering of this service, without prejudice, and direct Qwest to cease and desist (stop) offering it and to not offer any LSF service until the Company has submitted and the Commission has approved another LSF proposal.

As part of not providing the service, any customers who have subscribed to the service will be released from the service. Not offering the LSF service until a new proposal has been submitted and approved includes discontinuing any plans to issue bill inserts or other promotional material about this or any freeze service not approved by the Commission.

ORDER

1. The Commission denies Qwest's January 17, 2002 proposal (introduction of a local service freeze protection offering), without prejudice.

2. The Commission hereby orders Qwest to cease and desist (stop) offering this service or any local service freeze protection service until the Company has submitted and the Commission has approved a proposal to do so.

3. Any customers currently subscribed to Qwest's local service freeze protection service are hereby released from such service.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

Exhibit K

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, to investigate the effects of local service freezes in Nebraska.	)	Application No. C-2662/PI-55
	)	FINDINGS AND CONCLUSIONS
	)	Entered: May 7, 2002

APPEARANCES:

Qwest Corporation:
Jill Vinjamuri
Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102

Cox Nebraska Telcom LLC:
Jon Bruning
2425 S 144th St, Ste. 201
Omaha, Nebraska 68144

For the Commission staff:
Shanicee Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

ALLTEL Corporation:
Paul Schudel
Woods & Aitken
301 S. 13th Street, Suite 500
Lincoln, Nebraska 68508

Nebraska Technology
& Telecommunications, Inc.:
Dale Musfeldt
809 N. 96th Street
Omaha, Nebraska 68114

BY THE COMMISSION:

B A C K G R O U N D

The Nebraska Public Service Commission (Commission) opened the above-captioned docket on January 29, 2002, to investigate the effects of local service freeze offerings in Nebraska. Concomitantly in that order, the Commission demanded that Qwest Corporation (Qwest) cease and desist offering its proposed local service freeze program in Nebraska pending further review. Notice of this investigation appeared in The Daily Record, Omaha, Nebraska, on January 31, 2002.

Upon being informed about Qwest's proposal to offer a local service freeze to Nebraska consumers, the Commission issued a letter to Qwest requesting it to delay implementation of such service until the Commission had the opportunity to review the affects of this service on competition. Qwest responded that it was too late to delay implementation. However, Qwest informed the Commission that it would agree to delay the marketing of its product.

In addition, before formally opening this docket, the Commission received three informal complaints regarding Qwest's proposed local service freeze offering. ALLTEL Corporation (ALLTEL), Cox Nebraska Telcom, L.L.C. (Cox) and AT&T Communications of the Midwest (AT&T) sent letters to the Commission expressing concerns with Qwest's local service freeze offering and asking the Commission to investigate the proposed program. The Commission also received a petition from Cox requesting the Commission to issue a show cause action against Qwest and to order Qwest to cease and desist implementation of the local service freeze. Oral arguments were heard by the Commission on January 29, 2002. The Commission subsequently found that the issue was moot by the Commission's independent finding that the implementation of Qwest's local service freeze may be in violation of state law or federal law and ordering Qwest to cease and desist offering of the local service freeze pending further investigation.

A public hearing was held on February 20, 2002, in the Commission Hearing Room, Lincoln, Nebraska, upon notice to the parties by order entered January 29, 2002. Appearances at the public hearing were as shown above.

T E S T I M O N Y

Mr. Robert Logsdon, director of regulatory affairs for Nebraska and Iowa, testified first on behalf of Cox. Mr. Logsdon testified Cox believes that Qwest's actions in implementing the local service freeze are anti-competitive. Cox is the primary residential competitor in Omaha and Cox believes that there is no evidence of slamming by local carriers. To his knowledge, slamming has not been a problem in the local exchange markets as it has been in the long distance markets. Without a local service freeze, the customer only needed to make one phone call to switch local providers. With Qwest's local service freeze in place, customers will be required to lift the freeze with Qwest prior to leaving the company. Cox believes this to be an onerous requirement and one that would deter a number of customers from switching local providers.

Cox was also concerned that the information on the implementation of Qwest's local service freeze program was not adequate. Qwest sent a product notification to Cox on December 18, 2001, notifying competitive local exchange carriers (CLECs) of its decision to offer local carrier freezes for customer accounts in Nebraska. As of the date of the hearing, Qwest had not informed Cox on the proper procedures for lifting freezes on customer accounts. Cox was not given the phone numbers to call, information on how Qwest was going to be staffed to participate in three-way calls, nor was Cox informed about the hours Qwest would be available for three-way calls.

Mr. Logsdon further testified that it was difficult, if not impossible, for a customer to not know he or she was being switched to Cox service from Qwest. Therefore, a true act of slamming would be rare. A local service change from one facilities-based provider to another requires that a company technician set up an appointment to meet the subscriber and then requires physical modification of the system and wiring at the subscriber's home by the CLECs technician. Mr. Logsdon challenged Qwest to find proven cases of local slamming in Nebraska.

Cox took the position that the Federal Communications Commission (FCC) has given the states clear authority to issue moratoria on local service freezes. The FCC intended to leave the decision up to individual states. Mr. Logsdon testified this Commission has the ability to adopt such a moratorium upon local service freezes. Also, in the FCC's *Second Report and Order*, the FCC warned of the dangers for abuse among carriers. Mr. Logsdon further testified that the Colorado commission had specifically admonished Qwest for poor handling of three-way calls. Mr. Logsdon admitted that the Colorado decision pertained to Qwest's handling of primary interexchange carrier (PIC) freezes and not local freezes. Cox offered a copy of the Colorado Commission's order, which was received into evidence as Late-Filed Exhibit No. 13. In short, Mr. Logsdon stated that Cox believes the Commission has both the authority and the justification to ban preferred local carrier freezes in Nebraska. Cox advocated a complete moratorium on local service freezes.

Upon questioning, Mr. Logsdon provided that he saw no benefit in the local service freeze for consumers. First, he stated that the Commission was empowered to assist a consumer and punish a carrier if it determined that a local slam took place. Second, Qwest's local service freeze program was detrimental to competition because it added another step in the process for competitors to overcome. Mr. Logsdon testified that Nebraska has only a handful of competitors who have survived in the marketplace and there was no indication that local slamming could even become a big problem. Upon questioning by Ms. Vinjamuri, Mr. Logsdon testified that the Commission's three local slamming complaints, although unverified, should be considered seriously.

Mr. Brad Hedrick, testified next on behalf of ALLTEL. Mr. Hedrick offered ALLTEL's position statement into the record. It was received as Exhibit No. 7. Mr. Hedrick testified that he did not believe that the local service freeze was warranted or needed. ALLTEL did not utilize local service freezes in any of its incumbent local exchange carrier (ILEC) or CLEC operations. ALLTEL generally supported Cox's statements. He was not aware of any local slamming complaints filed by or against ALLTEL. ALLTEL believed that the local service freeze initiative by Qwest was anti-competitive. Mr. Hedrick testified that the Commission should balance the interests of ensuring that competition does develop with the needs of Nebraska consumers. It was ALLTEL's position that at this point in time, the implementation of local service freezes would be detrimental in the development of competition, while local slamming was not a prevalent problem.

More opposition came from Mr. Musfeldt, pro se, on behalf of Nebraska Technology & Telecommunications, Inc. (NT&T). He testified that the local service freeze as proposed by Qwest, would stall competition. NT&T was concerned that the local service freeze process would cause customer confusion and create inefficiencies for customers and CLECs alike. Importantly, the local service freeze as proposed by Qwest would add another step into the implementation process. Finally, Mr. Musfeldt testified that the interconnection agreement in place with the ILEC, which provides how the companies process their orders, is sufficient to deter them and like CLECs from slamming. Mr. Musfeldt testified that if NT&T changes a customer's service without prior authorization from the customer, Qwest could claim its interconnection agreement was in breach and could stop providing service to them.

Mr. Scott A. McIntyre, director of product and market issues, testified on behalf of Qwest. Mr. McIntyre provided in his direct testimony that Qwest's "local service freeze (LSF) program allows customers the choice of placing a 'hold' or 'freeze' on their local service account so that a change in local service providers cannot be made without their authorization."[1] This service is optional for consumers and is offered at no additional charge. Mr. McIntyre testified that local service freezes allow consumers to protect their account against slamming. He then testified that unauthorized changes in ser-

[1] McIntyre, Direct at 3.

vice providers were a concern of this Commission as demonstrated by its rules prohibiting the practice of slamming. Mr. McIntyre testified that the FCC has recognized that carrier freezes serve as a means of protecting consumers against slamming. The FCC also established methods for lifting a freeze. Qwest would follow the FCC standards.

Mr. McIntyre further testified that the value of preferred carrier freezes is underscored by the fact that three states require Qwest to offer them through rules and regulations. Washington, Colorado and Utah have adopted rules requiring all local exchange carriers to offer preferred carrier freezes.

The Qwest witness pointed to customer concern for a reason to support Qwest's local service freeze. Mr. McIntyre reminded the Commission that long distance slamming has been a problem in Nebraska in recent years. In support of this information, Qwest invited the Commission to refer to its most recent annual report to the Legislature and to the Commission's website. Mr. McIntyre asserted that based upon the degree of slamming that has occurred in the long distance arena, it is realistic to think that Nebraska consumers are concerned about the potential for local slamming as well.

O P I N I O N A N D F I N D I N G S

In order to open the local market to competition pursuant to the Telecommunications Act of 1996 (the Act), state commissions are required to remove any barriers to competition. Neb. Rev. Stat. § 75-109(2) gives the Commission broad authority to "do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996." The Act makes it clear that state and local barriers are to be removed and that regulators must help foster a competitive local market. In certain cases, a barrier can be built to impede competition through the practical effect of the policies and programs of the telecommunications carriers. A barrier exists when customers face problems purposefully changing carriers or when customers are otherwise deterred from choosing amongst carriers. To that end, the Commission must ensure that the customer experiences a seamless transition when changing from one carrier to another. The Commission is also charged with promoting and moreover, facilitating a simplified mechanism for the switching of local carriers in order to foster the development of competition.[2] This is not only a significant component for consumer

[2] *See* Consumer Bill of Rights in Application No. C-1128.

protection, it also vital for carriers trying to enter and compete in local markets.

The Commission is likewise charged by state and federal authorities to protect consumers from certain abuses inherent in a competitive market, specifically here, slamming. Slamming is the term commonly used to refer to unauthorized changes of a subscriber's preferred carrier. Slamming became a widespread problem in the long distance market in the late 1990s and is now illegal under federal law and many state laws including Nebraska's.

In this particular instance, the Commission is faced with a balancing test. The Commission must balance the interest of promoting competition pursuant to the directives of state and federal law against the possibility that slamming in the local market could become a prevalent problem in Nebraska.

Generally, a freeze placed on a customer's preferred carrier selection for local exchange service (hereinafter local service freeze) requires direct authorization by the customer to the local exchange carrier to lift the freeze before a change in carriers can be made. A freeze placed on a subscriber's account is usually aimed at preventing one telecommunications carrier from slamming a subscriber's account.

In this instance, the local freeze service proposed by Qwest would likewise require any subscriber with a freeze on his or her account to make direct contact with Qwest in order to lift the freeze. Lifting a freeze with Qwest representatives is a precondition to the subscriber's ability to effect a change in local carriers. The testimony provided by Qwest demonstrated, competitive carriers would not be informed that a local freeze was preventing that customer's order from being processed.[3]

The parties opposed to the adoption of a local service freeze by Qwest made several arguments. First, they argued that the local service freeze proposal offered by Qwest is anti-competitive. They argued further that it does not respond to any particular problem because there is no prevalence of local slamming. Third, they contended Qwest's proposed offering was a method used by Qwest in order to keep its market share.

[3] Qwest provided supplemental testimony in the place of a letter requested by the Commission as a late-filed exhibit. This testimony was objected to by Cox. The Commission sustains Cox's objection and infers only that no letter could be produced by Qwest.

Finally, they averred that local preferred carrier selection programs are easily susceptible to abuse.

All parties opposed to the local service freezes questioned the timeliness of this proposed offering in light of Qwest's 271 application. The parties argued the local service freeze to be anti-competitive. Qwest's actions, which limit competitor's access and ability to switch customers, would not conform with Qwest's arguments that they have sufficiently opened the market for local competition.

The parties are correct in that there is little evidence of local slamming in Nebraska. Omaha is the largest market and Cox, another facilities-based carrier, is Qwest's largest competitor. Qwest admitted they had knowledge of no other slamming complaints filed with the Commission other than those unverified complaints listed in Exhibit 9. The Commission has no validated cases of slamming between Cox and Qwest.

Also, clear cases of abuse by carriers have, in fact, been documented in other states.[4] Not only does the carrier have a second chance to convince the customer not to switch to a competing carrier, it also has the customer's account records at its disposal. Without proper mechanisms in place to guard against abuse, competing carriers are helpless to gain a level competitive foothold. Absent express abuse, there is evidence that a customer will be less likely to switch carriers if that customer faces obstacles to change.[5] The Commission is not satisfied that the potential for abuse has been eliminated.

Qwest on the other hand made four basic arguments in support of preferred carrier freezes. First, Qwest contended that its decision to implement a preferred carrier freeze program was based in customer concerns of slamming. Qwest also argued that local slamming is occurring in Nebraska. Third, Qwest provided that preferred carrier freezes were not only suggested by the FCC but also by state law. Finally, Qwest argued that some other states have required Qwest to make a preferred carrier freeze available to its customers and because it provides it in other states, it needs to provide it in Nebraska. We analyze these arguments accordingly.

First, Qwest argued that its decision to implement a preferred carrier freeze program in Nebraska was based upon customer concerns regarding local slamming. To support this

---

[4] *See* Exhibits 4 and 13.
[5] *Id.*

argument, Qwest used information from the State of Washington regarding the number of people that have signed up for a local service freeze. Although the Qwest witness offered this as reasoning on direct, Qwest was unwilling to release the exact numbers to the other interested parties when asked. The Commission ordered Qwest to provide this information, albeit under confidential seal.

The Commission finds that the numbers of subscribers in Washington with a local service freeze is irrelevant in demonstrating even a generalized customer fear of slamming. Just because subscribers have opted to have a freeze placed on their account, after prompting by the Qwest customer service representative, does not indicate that the subscriber had any particular fear that his or her account would be switched without authorization. Many times customers will agree to opt into programs provided by a telephone carrier particularly when touted as "free" and "protection." Moreover, the Commission does not find the Washington numbers pertinent to showing customer sentiment in Nebraska. The Washington Commission may have had more complaints of local slamming or more reason to believe a preferred carrier selection was appropriate. Qwest did not provide any evidence that customers in Nebraska were concerned or fearful about local slamming.

Compounded with the aforementioned customer concerns, Qwest argued that slamming in the local exchange market, was occurring. In support of this argument, Qwest requested that the Commission take administrative notice of three alleged local slamming complaints received as recently as this year. Commission staff counsel requested that the Commission supplement the record with the results of its investigation of the local slamming complaints. All three complaints involved McLeodUSA, a competitive local exchange carrier which recently filed for bankruptcy. Of the three alleged slamming complaints, the Commission investigator found that one customer had, in fact, requested a change in carriers but had forgotten. Two complainants admitted they told the telemarketer "yes" to receiving additional information but stated they did not consent to a change in carriers. These two complaints were resolved informally, the customers were switched back to the carrier of their choice and refunded by McLeodUSA.

The Commission finds the evidence of local slamming to be nebulous at best. There was little proof on the record that local slamming was occurring in Nebraska or could proliferate in the local market. The Commission finds that two incidents not sufficient to warrant a need for Qwest's local service freeze.

Qwest's argument was, therefore, unsupported by fact or evidence in the record.

It is true that the FCC, in its *Second Report and Order* in CC Docket No. 94-129, FCC 98-334 (Second Report and Order), cited the general benefits of preferred carrier freezes.[6] The FCC outlined a number of rules a carrier must follow when implementing preferred carrier freezes.[7] At the same time, the FCC warned that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets that are newly open to competition.[8] Moreover, the FCC made clear that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem appropriate to prevent anticompetitive conduct.[9] AT&T, Cox and ALLTEL argue that paragraph 137 of the FCC's order describes situation in this case. Finally, as provided in the hearing, the FCC's *Second Report and Order* mainly addresses the problems associated with long distance slamming, a problem that was prevalent at the time of the writing of that order.

In 1998, when slamming was becoming a problem in the long distance markets, it was assumed that it likewise would proliferate in a vulnerable local exchange market. The same holds true for the Nebraska Consumer Slamming Prevention Act in Neb. Rev. Stat. § 86-1901 et seq., and the Commission's rules and regulations. This law and the corresponding rules were developed with long distance slamming experiences in mind.

Although state law and Commission rules are applicable to local exchange carriers as Qwest points out, slamming was and remains more of a problem in the long distance arena where switching a carrier involves only a change in carrier codes. Unlike the case in the long distance market, the Commission finds that state and federal laws prohibiting slamming in the local service markets provide a sufficient deterrent from and adequate compensation for incidents of slamming. While our state law provides that slamming by a local exchange carrier is unlawful, it does not require Qwest to offer a local preferred carrier selection mechanism.

Accordingly, neither state nor federal law bars this Commission from adopting a moratorium on local service freezes. The Commission finds that the reasons which require long

---

[6] *See* Qwest Corporation's Post Hearing Brief at 3.

[7] *Id.* at 11.

[8] *See* Brief of Cox Nebraska Telcom, LLC at 9.

[9] *Id. See also* Second Report and Order ¶ 137.

distance carriers to offer a PIC freeze are not present in the case of local exchange carriers. Adding another step into the process of changing local exchange carriers constructs an additional barrier to competition. The local service freeze program Qwest wishes to implement is highly suspect at this time.

Upon consideration of the testimony and evidence adduced at the hearing, the Commission finds that the negative impact of such freezes on the development of competition in the local market outweighs the potential benefit of such service to consumers. The provisioning of local service freezes at this time would be harmful to the development of competition and that harm outweighs the benefit of preventing the possibility that a local slam should occur and other mechanisms in state and federal law cannot adequately compensate a victim of such an act.

Finally, the Commission rejects Qwest's argument that the Commission should give deference to a program Qwest was required to implement in other states and finds Qwest faces no undue burden from unequal enforcement of local service freezes throughout its region. Upon review of many of the programs in other states, the Commission became aware that the rules and regulations of those states apply across the board to all local exchange carriers. There are no such rules in place applicable to all carriers in Nebraska. The Commission declines to permit carriers on a piecemeal basis to implement local carrier freezes. If local carrier freezes are permitted at all, the Commission finds that such freezes should be made applicable to all carriers with appropriate safeguards founded in rules and regulations. At such time however, no carrier has demonstrated a palpable reason which convinces the Commission that local service freezes are needed or appropriate in the local market.

The Commission finds Qwest's argument that a moratorium in Nebraska would pose an undue burden upon the company, is likewise without merit. Qwest has programs, rates and terms that vary widely from state to state. Moreover, to date, Qwest is unable to offer its local service freeze program in a number of other states in its region. The Commission finds that it is not an undue burden on Qwest to instruct its account representatives of the prohibition on local service freezes in Nebraska.

The Commission, therefore, finds that local service freezes should be prohibited in Nebraska until further order by this Commission. Qwest is ordered not to offer its local service freeze program in Nebraska. The Commission further finds that this investigation and the petition filed in Application No. C-2664 should be dismissed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a moratorium on local service freezes be, and it is, hereby, adopted in Nebraska.

IT IS FURTHER ORDERED that Qwest be, and it is hereby, prohibited from offering local service freezes in Nebraska until further notice of the Commission.

IT IS FURTHER ORDERED that the petition filed in Application No. C-2664 should be, and it is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of May, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

Exhibit L

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S PETITION)
FOR APPROVAL OF AN ALTERNATIVE) UTILITY CASE NO. 3761
FORM OF REGULATION PLAN)

QWEST'S MOTION TO WITHDRAW LOCAL SERVICE FREEZE FILING AND DISMISS WITHOUT PREJUDICE

Qwest Corporation ("Qwest") hereby moves the Commission for leave to withdraw[1] its tariff, filed on February 13, 2002, setting forth terms and conditions under which Qwest proposed to offer customers additional protection against unauthorized changes in their local service provider, sometimes referred to as a "local service freeze" ("Transmittal 2002-008"). Because the withdrawal will render this case moot, Qwest also moves the Commission to dismiss this case without prejudice.

Qwest filed a motion on March 13, 2002 in Utility Case Nos. 3215, *et al.* asking the Commission to suspend consideration of *Transmittal* 2002-008 and agreeing that all limitations periods applicable to consideration of the filing would be tolled during the period of the suspension. Neither Staff nor any of the parties filing protests to Transmittal 2002-008 opposed Qwest's motion. On April 16, 2002, however, the Commission issued its "Order Finding Good Cause for Protests and Commencing Proceeding for Review of Proposed Local Service Freeze" (the

"Docketing Order") opening this case for an expedited review and hearing of the protests filed against Transmittal 2002-008 and, presumably, the proposal itself.

Taking into account the controversy currently surrounding Transmittal 2002-008 and because Qwest does not wish to divert its efforts and resources from other more urgent matters now pending before the Commission, Qwest does not wish to pursue the proposed tariff and Transmittal 2002-008 at this time. Qwest, nevertheless, still believes that allowing customers to freeze their local service accounts is not contrary to the public interest and would not restrain or inhibit competition, and that the protests are without merit. This motion and the relief requested hereby imply nothing to the contrary.

For purposes of considering this motion, Qwest represents to the Commission that Qwest is not now offering a *local service freeze option*, that there are no Qwest customers in New Mexico whose local service accounts are now frozen, and that Qwest will not offer a local service freeze option to New Mexico customers except under an approved tariff or other appropriate authorization by the Commission.

Qwest contacted counsel for Staff, the Attorney General, WorldCom, e-spire, Time Warner Telecom, and AT&T in regard to this motion. Staff, the Attorney General, WorldCom and e-spire have advised that, without concurring in any stated grounds, they do not oppose the relief requested by the motion. Qwest

---

Under Qwest's AFOR (Section XI.A.1), Qwest must file and obtain approval of a tariff was not informed of the positions of Time Warner Telecom, or AT&T at the time of filing.

WHEREFORE, Qwest asks the Commission to enter an order granting Qwest leave to withdraw Transmittal 2002-008 and dismissing this case without prejudice, all as more fully explained herein.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By ______________________
Thomas W. Olson
Post Office Box 2307
Santa Fe, NM 87504-2307
(505) 982-3873

Attorneys for Qwest Corporation

---

withdrawing a retail service. Neither the AFOR nor, to Qwest's knowledge, any existing rule of the Commission requires leave to withdraw a proposed tariff that has not yet become effective.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE REVIEW OF
QWEST CORPORATION'S PROPOSED
LOCAL SERVICE FREEZE OFFERING

Utility Case No. 3761

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **QWEST'S MOTION TO WITHDRAW LOCAL SERVICE FREEZE FILING AND DISMISS WITHOUT PREJUDICE** to be mailed and/or hand-delivered on May 1, 2002 to the following:

*Maryann Reilly, Esq.
Staff Counsel
Public Regulation Commission
224 E. Palace Avenue
Santa Fe, NM 87501

Patricia Salazar-Ives, Esq.
Cuddy, Kennedy, Hetherington,
Albetta & Ives, LLP
Post Office Box 4160
Santa Fe, NM 87504-4160

David M. Kaufman, Esq.
Director, Regulatory Affairs
e.spire™ Communications, Inc.
343 W. Manhattan Avenue
Santa Fe, NM 87501

W. Mark Mowery
Rodey, Dickason, Sloan, Akin &
Robb, P.A.
Post Office Box 1357
Santa Fe, NM 87504-1357

David Mittle, Esq.
Assistant Attorney General
Office of the Attorney General
Post Office Drawer 1508
Santa Fe, NM 87504-1508

Teresa Tan
WorldCom, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94105

Mary B. Tribby
Gary B. Witt
AT&T Communications of the
Mountain States, Inc.
1875 Lawrence Street, Room 1405
Denver, CO 80202

Carol A. Clifford, Esq.
The Jones Firm
Post Office Box 2228
Santa Fe, NM 87504-2228

Thomas W. Olson

* = hand-delivered